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F.No. 195/589/11-RA
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... 10/7/13

Order No. 873 /13-Cx dated 09.07.2013 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, Under Secretary 35 EE of the Central Excise Act, 1944.

Subject : Revision Application filed under section 35 EE of the Central Excise Act., 1944 against the Order-in-Appeal No. US/23/M-II/11 dated 24.06.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-II.

Applicant : M/S Hindustan Petroleum Corporation Ltd., Mumbai

Respondent : Commissioner of Central Excise, Mumbai-II

ORDER

This revision application has been filed by the applicant M/s Hindustan Petroleum Corporation Ltd., Mumbai against orders-in-appeal No. US/23/M-II/11 dated 24.06.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-II with respect to Order-in-Original passed by the Joint Commissioner of Central Excise, Mumbai-II.

2. Brief facts of cases are that the applicant M/s Hindustan Petroleum Corporation Ltd., were clearing their goods through the 'Mumbai Pune Pipeline (MPPL) to their terminals at Vashi and Loni during the year 2003-04. On going through the clearances of Kerosene, Motor Spirit and High Speed Diesel, without payment of duty under the cover of AR3As, it was observed that there was a difference in the quantity shipped from their refinery and the quantity received at Vashi and Lone Terminals. This difference was over and above the transit loss permitted by CBEC vide Circular No. 663/54/2002-CX dated 23.09.02 which permits transit loss of Rs. 0.25%. The Joint Commissioner confirmed the demand of Rs. 84,68,705/- along with interest and also imposed a penalty of like amount under Section 11AC of the Central Excise Act, 1944.
3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals) who rejected the same.
4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under section 35EE of Central Excise Act, 1944 before Central Government on the following grounds:-
 - 4.1 The issue involved in the case is as to whether demand of duty on transit loss of 7477.388 KL of Kerosene (SKO) during the transfer through pipeline from Refinery to Vashi and Loni Terminals is sustainable, in a case where, the same is

within the condonable limits as per CBEC Circular No. 261/6/20/02-CX.8 dated 31.10.1985 (treating transit loss of petroleum products upto 1% as condonable) Board's letter F.No.26/23/CXM/54 dated 1.6.56 and F.No.9/17/57/CX.II dated 2.3.1959 & CBEC Circular No. 55/89-CX.8 dated 15.12.1989 (treating 0.50% of transit loss as condonable) as against Department's allowing transit loss upto 0.25% and in a case where, Department has not adduced any evidence of any clandestine clearance by the assessee.

4.2 During the period 1.4.2003 to 31.3.2004, there was a gain of Motor Spirit (MS) of 4723.420 KL and loss in Kerosene (SKO) of 7477.388 KL at the Loni Terminal. Condonable loss @ 0,25% on the total dispatch of 3730225.536 KL of the three products works out ot 9325.564 KL, which is much more than the actual overall loss of all the three products taken together (after off-setting the gain of MS) i.e. 6912.400. Thus the applicants submit that loss in the pipeline operations is much less than the condonable limit and hence, no duty liability arises at all.

4.3 The applicants submit that the total loss or gain of the pipeline operations needs to be considered on an overall basis for all the three products and all the locations, since the pipeline is on a continuous pumping mode. The location wise ARE-1s are made only directional since the dispatch cannot be identified specific to particular location and the loss or gain in one location will have to be seen together with loss or gain in the other location.

4.4 It has been clarified through Board's Letter issued from F.No.26/23/CXM/54 dated 1.6.56 and F.No.9/17/57/CX.II dated 2.3.1959 & CBEC Circular No. 55/89-CX.8 dated 15.12.1989, that transit loss in deliveries by pipeline 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.

4.5 As per CBEC Circular No. 261/6/20/02-CX.8 dated 31.10.1985, transit loss of petroleum products upto 1% is condonable and duty thereon is not payable. Invoking the ratio of the said CBEC Circular dated 31.10.1985, the Tribunal in the case of IOCL [reported in 2007 (220) ELT 260 (T)] has held that duty on such permissible transit loss is not payable.

4.6 In the applicant's own case also, the Revisionary Authority of Government of India through its order dated 18.3.1991 [reported in 1991(54) ELT 315 (GOI)], has held that gain in one product to be set-off against loss in other product during transit.

4.7 The Central Board of Excise and Customs through its Circular No. 636/27/2002-CX dated 22.4.2002, while considering the problem of accountal of petroleum products resulting from intermingling of different product pumped through pipelines and while considering the duty payable on the interface SKO (co-mingled products), refers to the existing instructions vide Board's letter F.No. 21/13/66-CX. III, dated 29.3.67 and F.No. 11A/9/70-CX.9, dated 27.3.1973 accepting the off-setting of gain observed in one product against loss observed in another product.

4.8 That if the shortages and excesses of all the three products (HSD, SKO and MS) taken together are considered, loss is within the permissible limit of 0.25% which is explained with the following calculations:

Product	If shortage off-set against excess	Total of 0.25% permissible shortage	Within 0.25%
(SKO)	(-) 8934.948	1457.560	6729.629
(HSD)	(-) 2133.335	1162.262	(-) 6344.863
(Total)	(-) 11068.283	44110.007	384.966
(MS)	(+) 4723.420	6729.829	
(Net effect)	(-) 6344.863		

5. Personal hearings was scheduled in this case on 05.03.2013 and 27.06.2013. Hearing held on 05.03.2013 was attended by Shri K. Shankar Murthy, Deputy General Manager on behalf of the applicant who reiterated the grounds of revision applications. The applicant also relied upon Hon'ble Bombay High Court's judgement in the case of W.P. No. 1497/11, wherein Honble Bombay High Court has quashed the GOI order No. 1759/10CX dated 22.12.2010 and directed the department to refunded the amount of duty alongwith interest. Nobody attended hearings on behalf of respondent department.

6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

7. The applicants had pumped HSD, SKO and MS to their Vashi and Loni Terminal through pipeline. During the period April 2003 to March, 2004 on clearances of said three products to Vashi Terminal, the transit losses were within the permissible limit of 0.25%. However in respect of clearances to Loni Terminal, there was transit loss in SKO of 7477.388 KL and gain of MS of 4732.420 KL. The original authority confirmed the demand of Rs. 84,68,705/- alongwith interest. A penalty of Rs. 84,68,705/- was also imposed under section 11AC of Central Excise Act, 1944. The Commissioner (appeals), upheld the impugned Order-in-Original. Now applicant has filed this revision application on the grounds stated above.

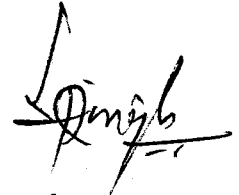
8. Applicant has mainly argued that the gain in one product is to be offset against the loss in another product and the CBEC through circular dated 22.04.2002 while considering the problem of accountal of petroleum products resulting from inter mingling of different products pumped through pipelines and while considering duty payable on interface SKO (Co-mingled products) refers to the existing instructions vide CBEC letter F.No. 21/13/66-Cx-III dated 20.03.67,

F.No. 11A/9/70-Cx.9 dated 27.03.73 accepting the offsetting of gain observed in one product against loss observed in another product. Applicant has also relied upon Hon'ble Bombay High Court order dated 10.07.2012 in the case M/s HPCL Vs. G.O.I. in WP No. 1497/11. In the said order G.O.I. Revision order No. 1759/10-Cx dated 22.12.2010 was quashed and department was directed to refund the duty alongwith interest. Applicant has also relied upon the G.O.I. Revision order in their own case reported as 1991(54) ELT 315(G.O.I.). Government notes that lower authorities have not considered the above said judgement and provisions of said CBEC circulars while deciding the case. Therefore, the order passed by lower authorities suffer from legal infirmity and case is required to be remanded back from fresh consideration.

9. In view of above position, Government sets aside the impugned orders, and remands back the matter to original authority from denovo consideration in the light of above observations. A reasonable opportunity of hearing will be afforded to the parties.

10. Thus revision application is disposed off in terms of above.

11. So, ordered.



(D P Singh)

Joint Secretary (Revision Application)

M/s Hindustan Petroleum Corporation Ltd.,
Refinery Division, B.D. Patil Marg,
Mahul, Mumbai -400074.

(Attested)



(भगवती शर्मा/Bhagwati Sharma)
सहायक आयुक्त/Assistant Commissioner
C.B.E.C-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली / New Delhi

G.O.I. Order No. 873 /2013-Cx dated 09.07.2013

Copy to:-

1. Commissioner of Central Excise, Mumbai-II Commissionerate, 9th Floor, Piramal Chambers, Lalbaug, Parel, Mumbai-400 012.
2. The Commissioner of Central Excise (Appeals), Mumbai-II Zone, Utpad Shulk Bhavan, 3rd Floor, Plot No. C-24, Sector-E, Bandra-Kurla Complex, Bandra(E), Mumbai-400 051.
3. The Joint Commissioner of Central Excise, Mumbai-II, Piramal Chamber, Lower Parel, Mumbai.
4. PS to JS(RA)
5. Guard File
6. Spare Copy.


(Bhagwat P. Sharma)
OSD(RA)

