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F.NO.195/241/11-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: 30.01/13

ORDER NO. 92 /2013-R.A. DATED 30.1.13 OF THE GOVERNMENT OF
INDIA, PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT
OF INDIA, UNDER SECTION UNDER SECTION 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.YDB/55/M-II/2011 dated
25/1/2011 PASSED BY COMMISSIONER OF
CENTRAL EXCISE (APPEALS), MUMBAI ZONE-II

APPLICANT : M/s INDIAN OIL CORPORATION LTD., MUMBAI

RESPONDENT : COMMISSIONER OF CENTRAL EXCISE, MUMBAI-II

ORDER

This revision application is filed by M/s. Indian Oil Corporation Ltd., Worli, Mumbai against the order-in-appeal No.YDB/55/M-II/2011 dated 25/1/2011 passed by Commissioner of Central Excise (Appeals), Mumbai Zone -II with respect to order-in-original No.ASB/Refund/33-R/CH-I/2009-10 dated 16.12.2009 passed by Assistant Commissioner Central Excise, Mumbai-II Commissionerate.

2. Brief facts of the case is that the applicants are engaged in purchasing & storing the duty paid Low Sulphur High Flash High Speed Diesel (LSHF HSD) from M/s Bharat Petroleum Corporation Ltd. (M/s BPCL) and are supplying the same to International Bunkers. During the period, July 2006 to October 2006, the applicants supplied the duty paid LSHF HSD purchased from M/s BPCL to foreign going vessels. The LSHF HSD supplied to foreign going vessels, being export, is fully exempt from payment of duty. The duty paid LSHF HSD was supplied to foreign going vessels vide letter No.ST/SRP/VG/Navy Refund dated 13.7.2007, the applicants filed refund claim for Rs.48,95,743/- before the Jurisdictional Asstt. Commissioner. Before filing their refund claim, the appellants had applied to the Central Excise Authority of F-II Division, Mumbai-I Commissionerate for acceptance of Proof of Export of the product exported under Rule 19 of the Central Excise Rules 2002 against letter of undertaking. The lower authority held that since the proof of export is obtained from the jurisdictional Central Excise Authority and entries in respect of the amount of duty foregone remained in the running bond account, the question of considering the application for refund did not arise. Accordingly, department issued show cause notice and vide impugned order-in-original rejected the refund claim.
3. On being aggrieved of above order-in-original, the applicants filed appeal against the said Order before the Commissioner (Appeals) of Central Excise, Mumbai-II, who rejected the same.
4. Then on further being aggrieved by the applicant had filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The Applicants supply the LSHF HSD to the vessels from their installation at Sewree. The LSHF HSD was received from M/s. Bharat Petroleum Corporation Ltd. Mumbai (M/s. BPCL). The Applicants received the LSHF HSD on duty payment by M/s. BPCL, which is used for supply to the vessels other than foreign going vessels. The Applicants also receive LSHF HSD without excise duty payment, under export Warehousing Procedure and the same is used for supply to the foreign going vessels. M/s. BPCL supplies the duty paid or non-duty paid LSHF HSD as per the requirements advised by the Applicants from time to time. Due to huge volume of transactions between the Applicants and M/s. BPCL and communication gap between M/s. BPCL and the Applicants, in the instant case, M/s. BPCL supplied excise duty paid LSHF HSD, to the Applicants, against the requirement of non-duty paid LSHF HSD. The Applicants, under presumption that the LSHF HSD was non duty paid, supplied the LSHF HSD to foreign going vessels without charging the excise duty and filed the AREIs accordingly under Rule 19 of CER 2002. During product reconciliation with M/s. BPCL, this error was realized and the Applicants filed the excise duty rebate claim by completing the procedure under Rule 18 of CER 2002.

4.2 Applicants submit that in the instant case, there is no dispute that the impugned goods have been exported. The Applicants have also furnished adequate documents to prove that the goods which are exported were duty paid goods. The Applicants have complied with all the conditions of Notifications issued under Rule 18 and have also followed the prescribed procedure for the same. Due to the circumstances as explained above, initially AREIs have been filed under Rule 19 instead of under Rule 18. However, merely on this procedural infractions, the rebate claim rightfully due to the Applicants has been rejected. The Applicants submit that filing of refund claim, itself amounts to communication to the Department of the facts that the product was duty paid in nature and separate cancellation of Letter of Undertaking is only the procedural requirement. The adjustment in the remaining bond amount is also a procedural issue and the same can be cured. The Applicants

submit that the export benefits given under Central Excise Act are incentives given for promoting export and hence should not be denied on mere procedural infractions. In support of their contention, the applicant relied upon some case laws.

4.3 Original copies of relevant Invoices were submitted under acknowledgement to the Department. The Invoices were signed by BPCL representative in the upper portion and not in the column provided for the signature. However, it was attested by the Central Excise Officer. Merely by relying on this mistake, the Asstt. Commissioner and the Commissioner (Appeals) have given findings that the duty paid nature of the goods which are exported has not been established. The Commissioner (Appeals) has held that the invoices were unsigned. This is not factually correct and the invoices have actually been signed by the BPCL representative, although not at right place.

4.4 The duty paid nature of the product is clearly established from the invoices received from M/s. BPCL and the PLA & TR-6 challan copies submitted before the Excise Authorities. To establish the duty paid nature of the product, the stock correlation statements were also submitted. Even if the invoice was not signed at the proper place, the Revenue could have verified the duty paid nature of the product from other documents furnished by the Applicants viz. Monthly Returns filed for the month of May 2007, PLA copy and the Disclaimer Certificate issued by M/s. BPCL for the excise duty paid against said Invoices. It may be observed that in the disclaimer certificate M/s BPCL has clearly certified that these specific invoices were issued by them and the -duty burden thereon has been discharged. Therefore the finding of the Commissioner (Appeals) that the duty paid nature of the goods could not be established as the invoices evidencing payment of duty remained unsigned is not correct and not justified.

5. The respondent department vide their letter F.No.V/(IOCL) TR6-131/Commissioner (Appeals)/10-1/Ch.II dated 29.3.2012 mainly submitted as follows:

5.1 The applicant themselves admit in their application that, the correlation of the goods of its nature is not possible and they follow first in first out method for

clearance of LSHF HSD. The applicant received both duty paid and non-duty paid LSHF HSD in their installations which are not separately identifiable. So it is very clear that, goods are not physically co-relatable on their duty paid nature and that, these are not gone directly from the factory of manufacturer and that these are received from M/s BPCL. So they cannot claim the benefit under Rule 18 of the Central Excise Rules.

5.2 Apart from that it is also emphasized that the subject goods were cleared under self-certification and goods were not examined by the Customs/Central Excise Officers as to its physical nature of duty paid character by marks and numbers. It was held by the Hon'ble Supreme Court in the case of M/s Mangalore Chemicals and Fertilizers v/s Dy.Commissioner 1991(55) ELT 437(SC) that a distinction between the provisions of statute which are of substantive nature and are built in with certain specific policy on one hand, and those which are technical nature on the other hand, must be clearly distinguished. The condition of direct export from factory can be relaxed only where identity of the goods cleared on payment of duty from the factory can be co-related with the identity of the goods later exported. This is a substantive condition and has to be complied with.

6. Personal hearing was scheduled in this case on 11.10.2012 and 20.12.2012. Shri Sachin Chitnis, Advocate and Ms Padmawati Patil, Advocate appeared for hearing scheduled on 20.12.2012 on behalf of the applicant who reiterated the ground of revision application. Shri Avinash S. Majumdar, Superintendent attended hearing on behalf of respondent department and stated that the issue has already been decided by GOI vide Revision Order No.1385-87/12-Cx dated 4.10.2012.

7. Government has carefully gone through the relevant case records and impugned orders.

8. Government notes that in the impugned case the goods were cleared for export under bond on the strength of UT-I in terms of Rule 19 of Central Excise Rules, 2002. Their general running bond was debited. After completion of exports, the proof of exports in prescribed form were submitted to a concerned Assistant Commissioner Central Excise for acceptance. At the same time they claimed that the said goods were procured from M/s BPCL on payment of duty and therefore they

were entitled for rebate claim under rule 18 of Central Excise Rules, 2002. As such they filed rebate claim which was rejected by original authority. Commissioner (Appeals) uphold the impugned Order-in-Original. Now applicant has filed this revision application on the grounds stated in para 4 above.

9. The applicant is pleading that after exporting the goods under bond/UT-I without payment of duty and after filing proof of export they filed rebate claims and established the correlation of duty paid goods procured by them from M/s BPCL with the exported goods. In this regard, it is observed that department has contended that goods exported under Bond (UT-I) cannot be correlated with the duty paid goods procured from BPCL by the applicant. The applicant themselves admitted in their Revision Application that they could not able to identify whether goods were duty paid goods or non-duty paid goods. Further applicant by way of incontrovertible documentary evidences could not prove that actually duty paid goods were exported. The exports are declared under UT-I without payment of duty from Bonded supplies. There is no certification by Central Excise officers in part A of ARE-1 form. The exports are effected under Rule 19 of Central Excise Rules, 2002 for which proof of export were also submitted in the prescribed form. These factual recorded details cannot be brushed aside simply on the claim of applicant that he has exported duty paid goods for which he claims to be entitled for rebate claim. The claim of applicant that they have exported goods out of duty paid stock received from BPCL is not found supported by incontrovertible valid documentary evidence.

10. Government further observes that the exports under 18 or 19 are under two different schemes. Rule 18 governs the export of duty paid goods under rebate claim while rule 19 governs the export of goods without payment of duty under Bond/UT-I. Both the schemes are altogether different from each other and are regulated by different procedure/conditions. Exporter has to carefully choose the scheme beneficial to him before hand and has to follow the applicable procedure and conditions. It is not permissible to amalgamate both the scheme at his sweet will. In this case applicant had opted for exports without payment of duty under UT-I in terms of Rule 19, so the exports will have to be governed with the provision of said rule. The said declaration of export without payment of duty under rule 19 itself put prohibition on allowing rebate claim. The instant claim of applicant that he has

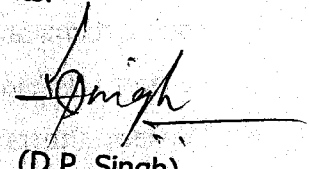
exported duty paid goods is self-contradictory and also not found correct on verification by both the lower authority. Even applicant could not satisfy this authority also.

11. The applicant has relied upon some case laws including UOI order in the case of Vinergy International Pvt. Ltd. reported in 2012 (278) ELT 40(GOI) and Leighton Contractor reported in 2011 (267) ELT 422 (UOI). Government notes that in the case of M/s Vinergy International Pvt. Ltd., goods were exported on payment of duty under rebate claim in terms of rule 18 of CER 2002 and rebate claim was allowed since applicant produced enough documentary evidence to correlate the exported goods with the goods cleared from factory of manufacture. Whereas in the instant case applicant has exported the goods without payment of duty under bond in terms of rule 19 of CER 2002. The proof of export submitted by applicant was also accepted by department. Subsequently rebate claim was filed claiming that they had exported duty paid goods. The applicant could not submit valid documentary evidences to prove that actually duty paid goods were exported by them. Under such circumstances, facts of the cases are different and ratio of GOI order in the case of M/s Vinergy International Pvt. Ltd., cannot be made applicable to this case. Similarly the facts involved in the case Leighton Contractors (India) Pvt. Ltd., was the claim of drawback of import duty paid after re-exporting the previously imported goods under Section 74 of the Customs Act 1962. It has been held by GOI in this case that since the applicant paid applicable duty at the time of import/subsequent to import and identity of re-exported goods with reference to imported goods was established, the claim of drawback under section 74 of the Customs Act 1962 was admissible. Since, fact of the case is different, ratio of judgement of GOI in the case of M/s Leighton Contractors (India) Pvt. Ltd. cannot be made applicable to this case.

12. The other case laws cited by the applicant, deal with relaxation of procedural lapses when substantial conditions are fulfilled. In the instant case applicants have failed to meet the mandatory/substantial requirement of law that the same goods which have suffered duty at the time of clearance from factory are be exported to claim rebate benefit under Rule 18 of the Central Excise Rules, 2002. Moreover the goods were initially exported without payment of duty under UT-I in terms of Rule 19 by following the applicable procedure. The facts of instant case are altogether

different from the cited cases and therefore the said case laws cannot be made applicable to this case. Hon'ble Supreme Court in the case of M/s Paper Products Ltd. Vs. CC [1999 (112) ELT-765(SC)] and Commissioner of Central Excise Vadodara Vs. Dhiren Chemicals Industries Ltd. 2002 (143) ELT 19(SC) has held that the plain reading of statute as clarified and elaborated vide the then applicable CBEC Manual circulars are mandatorily binding on the departmental authority. Further, Hon'ble Supreme Court in case of M/s India Aluminum Co. [1991(55) ELT 454(SC)] and Hon'ble Tribunal in case of M/s Avis Electronics has observed that when provisions are stipulated for doing a particular act in a specific manner then it would mean that any deviation there from is not permitted at all and it should be performed in the manner itself as per Rules.

- 13. In view of above position, Government finds no infirmity in the impugned Orders-in-Appeal and therefore uphold the same.
- 14. Revision Application thus stands rejected for being devoid of merits.
- 15. So, ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

M/s. Indian Oil Corporation Ltd.,
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Attended
(आचार्य/Secretary)
उपसहायक सचिव/Assistant Commissioner
CBE-OSD (Revision/Revision)
विभागाध्यक्ष (विशेष/विशेष)
Ministry of Finance (Dept. of Revenue)
आचार्य/Secretary
४४, १२३/१२३, New Delhi

Order No. 92 /2013-Cx dated 30.1.2013

Copy to:

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3. Assistant Commissioner of Central Excise, Chembur-I Division, Mumbai-II, Commissionerate, 1st Floor, Ganges Building, 110, L.B.S.Marg, Vikhroli (W), Mumbai-400083
4. Shri Sachin Chitnis, Advocate and Ms Padmawati Patil, Advocate, Advocate & Consultants, Post Office Building, 2nd Floor, Andheri-Kurla Road, J.B.Nagar, Andheri (East), Mumbai-400059
- ✓ 5. PA to JS(RA)
6. Guard File.
7. Spare Copy

ATTESTED



(B.P.Sharma)

OSD (Revision Application)

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THE UNIVERSITY OF CHICAGO
DIVISION OF THE PHYSICAL SCIENCES
DEPARTMENT OF CHEMISTRY

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NO. 1000

BY
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