

F. No. 195/56/2016-R.A.

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F. No. 195/56/2016-R.A.  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue: .....

Order No. 714/2018 -Cx dated 27-12-18 of the Government of India, passed by Shri R.P. Sharma, Principal Commissioner & 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 Order-In-Appeal No. 14-CE/APPL-LKO/LKO/2016 dated 08.01.2016, passed by the Commissioner (Appeals), Central Excise & Service Tax, Lucknow.

Applicant : M/s Indian Oil Corporation Ltd., Bulk Oil Depot, Banthara, Distt. Shahajanpur (U.P.)

Respondent : The Commissioner of Central Excise, Lucknow

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**ORDER**

A Revision Application No. 195/56/2016-R.A. dt. 06.04.2016 is filed by M/s Indian Oil Corporation Ltd. (hereinafter referred to as the applicant) against the Order-In-Appeal No. 14-CE/APPL-LKO/LKO/2016 dated 08.01.2016, passed by the Commissioner (Appeals), Central Excise & Service Tax, Lucknow, whereby the applicant's appeal has been rejected and the order of original adjudicating authority confirming the demand of Central Excise duty has been upheld.

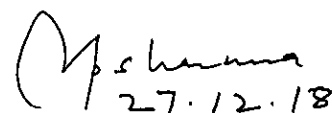
2. The Revision Application is filed mainly on the grounds that the shortage of petroleum products found in their warehouse/storage was on account of natural causes like evaporation, variation in temperature etc., the same is condonable as per CBEC circular no. 261/6/28/80-CX-8 dt. 19.10.1981 and the goods were never removed clandestinely so as to attract demand of duty.

3. A personal hearing was held on 30.11.2018 and Ms. Reena Khair, Advocate, appeared for the applicant and reiterated the above narrated grounds which are pleaded in their Revision Application also.

4. The Government has examined the matter and it is found that the demand of Central Excise has been confirmed by the adjudicating authority and upheld by the first appellate authority on the premise that the short-found petroleum products were clandestinely removed from the warehouse/storage at Banthara, Distt. Shahajanpur (U.P.). However, the applicant has pleaded that shortage of the goods were found on account of volatility of goods and variation in temperature etc. Thus, the issue involved in the Revision Application is with regard to demand of duty on account of clandestine removal/loss of stored goods. Whereas a Revision Application can be filed with the Government as per Section 35EE read with first proviso to Section 35B of the Central Excise Act in connection with loss of goods where the loss occurred in transit from a factory to a warehouse or to another factory, or from one warehouse to another, or during the course of processing of the goods in a warehouse or in storage. Therefore, a Revision Application can be filed in regard to loss of goods only when the loss is due to processing or transition of the goods. But the Revision Application for any

other type of loss of goods in a storage on account of natural causes etc. involving remission of duty cannot be filed with the Government. This view is also supported by the CESTAT's Final order no. 54719-20/2017 dt. 06.07.2017 in the case of M/s Kisan Sahkari Chini Mills Ltd. Vs CCE Meerut-II wherein the appeal of assessee involving loss of goods on account of bursting of molasses storage tanks, remission of Central Excise duty claimed by the assessee and demand of Central Excise duty by the Central Excise authorities is decided by the CESTAT and not the revisionary authority. Further this view is also supported by Government of India's Order no. 86/2015-CX dt. 28.09.2015 in the case of DSM Sugar, Order no. 161/2017-CX dt. 14.09.2017 in case of Tulsipur Sugar Company, Balrampur and Order no. 493/2018-CX dt. 01.08.2018 in the case of J.H.V. Sugar Ltd. wherein it is held that the Government does not have jurisdiction in the case of loss of goods not occurring during the course of processing of goods in a warehouse/storage and has jurisdiction only where loss of goods occurred during the course of processing or in transit from one place to another place. Since in the instant case the loss of goods is not claimed to be on account of either transition of the goods or during manufacturing process, the Government is convinced that issue relating to demand of duty on account of storage loss or clandestine removal does not fall in the ambit of the Government.

5. Accordingly, the Revision Application is rejected as non-maintainable before the Government without going into the merits of the case.

  
27.12.18

(R.P. Sharma)

Additional Secretary to the Government of India

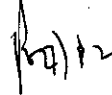
M/s Indian Oil Corporation Ltd.,  
Bulk Oil Depot, Banthara,  
Distt. Shahajanpur (U.P.).

Order No. 714/2018-Cx dated 27-12-2018

Copy to:

1. The Commissioner of Central Excise, Customs and Service Tax, 7-A, Ashok Marg, Lucknow-226001.
2. The Commissioner (Appeals), Central Excise, Customs and Service Tax, Hall no. 2, 8<sup>th</sup> Floor, Kendriya Bhawan, Aliganj, Lucknow- 226024.
3. The Assistant Commissioner of Central Excise, Division- Sitapur, Near Eye Hospital, Sitapur.
4. DGM(F), M/s Indian Oil Corporation Ltd., 1, Indian Oil Bhawan, Aurobindo Marg, Yusuf Sarai, New Delhi- 110016.
5. P.A. to A.S.(R.A.)
6. Guard File
7. Spare copy

ATTESTED

  
(Ravi Prakash)  
O.S.D.(R.A.)