

SPEED POST



F.No. 198/12/2019-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 20/12/21

Order No. 285/21-Cx dated 20/12/2021 of the Government of India passed by Sh. Sandeep Prakash, 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. 22/HAL/CE/2019-20 dated 16.05.2019, passed by the Commissioner (Appeals-II), CGST & Central Excise, Kolkata.

Applicant : The Commissioner of CGST & Central Excise, Haldia.

Respondent : M/s Indian Oil Corporation Ltd., Medinipur (Haldia).

ORDER

A Revision Application No. 198/12/2019-RA dated 23.08.2019 has been filed by the Commissioner of CGST & Central Excise, Haldia (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 22/HAL/CE/2019-20 dated 16.05.2019, passed by the Commissioner (Appeals-II), CGST & Central Excise, Kolkata. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, allowed the appeal filed by M/s. Indian Oil Corporation Ltd., Medinipur (Haldia) (hereinafter referred to as the Respondent) against the Order-in-Original No. R-24/Tech/Rebate/Hal-I/2018-19 dated 31.01.2019 passed by the Joint Commissioner (in-situ), CGST & Central Excise, Haldia-I Division.

2. Briefly stated, the Respondents herein filed a rebate claim for an amount of Rs. 9,66,304/- in respect of Central Excise duty paid on 1228.6 KL of Aviation Turbine Fuel (ATF) issued from Haldia Refinery, during the period April 2017 to June 2017, to Bhubaneshwar Depot for further stock transfer to Bhubaneshwar AFS and ultimately exported by way of refueling aircraft going abroad. Certain discrepancies were observed in the rebate claim, viz, (i) the ARE-1 copies do not contain self-sealing certificate or certification of the Range Officer, (ii) it is not mentioned in the ARE-1 that the export is under claim of rebate, (iii) the ATF was supplied from Bhubaneshwar AFS to foreign bound aircraft under bond without payment of duty, and (iv) the ARE-1 copies do not have the address of the rebate sanctioning authority. Consequently, the rebate claims were rejected by the original authority, vide aforesaid Order-in-Original dated 16.05.2019. The appeal filed by the Respondents herein has been allowed by the Commissioner (Appeals), vide the impugned Order-in-Appeal.

3. The revision application has been filed, mainly, on the grounds that the ARE-1 copies do not contain either self-sealing certificate or certification by the Range Officer in Part-A of ARE-1 in contravention of Notification No. 42/2001-CE (NT) dated 26.06.2001; that M/s IOCL, Bhubaneshwar AFS started exporting ATF to foreign going airlines w.e.f 27.04.2017 by quoting a B-3 bond dated 02.06.2017 which had

no validity on the date of clearance; and that if the law requires something to be done in a particular manner, one has to proceed only in a manner prescribed under law. The Respondents have filed a written reply dated 10.09.2019.

4. Personal hearing was fixed on 10.11.2021, 24.11.2021 & 15.12.2021. No one appeared for the Applicant department nor any request for adjournment has been received. In the personal hearing held on 15.12.2021, Ms. Reena Khair, Advocate and Ms. Shreya Dahiya, Advocate made submissions on behalf of the Respondent and reiterated the contents of the reply dated 10.09.2019. They highlighted that the duty paid nature of goods is not disputed. Further, the stamping of B-3 on the ARE-1 was inadvertent. Further, Written Submissions have been filed, on 15.12.2021, after the PH. Since sufficient opportunities have been granted to the Applicant department, the matter is taken up for final disposal based on records.

5. The Government has carefully examined the matter. It appears that at the time of start of international flight operations from Bhubaneswar Airport, the Respondents herein did not have Mixed-Bonding permission for storing of duty paid and bonded products at the location, even though the same had been applied for on 03.07.2015. Therefore, in order to fuel the international flights during the period April 2017 to June 2017, they supplied duty paid ATF to foreign going airlines. The B-3 bond was executed on 02.06.2017 and first parcel of bonded ATF is stated to have been received on 08.06.2017. The rebate in respect of the Central Excise duty paid on the ATF supplied to the foreign going aircraft from 27.04.2017 (i.e. the date of first international flight) to 07.06.2017 (i.e. till bonded ATF was received at the location) is in dispute. This dispute arises out of the discrepancies found by the department in following the ARE-1 procedure by the Respondents herein. The Hon'ble Bombay High Court has, in the case of *UM Cables Ltd. vs. Union of India* {2013 (293) ELT 641 (Bom.)}, held that the conditions and limitations for the grant of rebate, as specified in para-2 of the Notification No. 19/2004-CE (NT) are mandatory whereas the procedure specified in para-5 thereof is directory in nature. In the case of *Zandu Chemicals Ltd. vs. Union of India* {2015 (315) ELT 520

(Bom.)), the Hon'ble Bombay High Court has followed the judgment in the case of UM Cables Ltd. and further held that the procedural provisions are capable of substantial compliance. In the present case, since there was no bonded ATF facility, at the relevant time at Bhubaneshwar Airport, the ATF supplied, during the period in dispute, could not but have been duty paid. In the written submissions dated 15.12.2021, it has also been brought out that, pursuant to the impugned Order-in-Appeal, the department has, after a due verification, already sanctioned the disputed rebate claim. In this background, the Government does not consider it to be a fit case for revision.

6. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

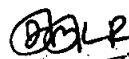
The Commissioner, CGST & CX,
Haldia Commissionerate, M.S. Building,
5th & 7th Floor, 15/1, Strand Road, Kolkata – 700 001.


Order No. 285/21-Cx dated 20-11-2021

Copy to:

1. M/s Indian Oil Corporation Ltd. (Marketing Division), Haldia Installation, P.O. Haldia Oil Refinery, Dist: Purba, Medinipur-721 606.
2. The Commissioner (Appeals-II), CGST & Central Excise, Kolkata, Bamboo Villa, 3rd Floor, 169, A.J.C. Bose Road, Kolkata – 700 014.
3. Ms. Reena Khair, Advocate, R-163, 2nd Floor, Greater Kailash, Part-I, New Delhi- 110048.
4. PA to AS(RA).
5. Guard File.
6. Spare Copy.

ATTESTED


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