

SPEED POST



F.No. 198/08/2019-RA  
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. 29/12/21

Order No. 286/21-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. 289-290/HAL/CE/2018-19 dated 19.02.2019, passed by the Commissioner (Appeals-II), CGST & Central Excise, Kolkata.

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

Respondent : M/s Bharat Petroleum Corporation Ltd., Kolkata.

**ORDER**

A Revision Application No. 198/08/2019-RA dated 14.06.2019 has been filed by the Commissioner, CGST & Central Excise, Haldia (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 289-290/HAL/CE/2018-19 dated 19.02.2019, passed by the Commissioner (Appeals-II), CGST & Central Excise, Kolkata. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, set aside the Orders-in-Original Nos. R-27/Tech/Rebate/Hal-I/2017-18 dated 14.12.2017 and R-28/Tech/Rebate/Hal-I/2017-18 dated 14.12.2017, passed by the Assistant Commissioner, CGST & Central Excise, Haldia-I Division and allowed the appeal of M/s Bharat Petroleum Corporation Ltd., Kolkata (hereinafter referred to as the Respondent).

2. Briefly stated, the Respondents herein had filed two rebate claims, amounting to Rs. 60,20,153/- and Rs. 18,57,463/-, vide letters dated 28.08.2015 and 07.02.2015, respectively, pertaining to supply of Aviation Turbine Fuel (ATF) to foreign going aircraft under the cover of 41 and 10 ARE-1s, during the months of October, 2014 & April, 2014, respectively. The rebate claims were rejected by the original authority on the grounds that the ARE-1s submitted are incomplete in many respects; that the Daily Stock Sheets and Commercial Invoices do not contain any duty paying documents; that original copy of ARE-1s have not been submitted; and that Fuel Delivery Notes submitted with the claim show that the ATF was supplied from bonded warehouse and not from duty paid stock. The Commissioner (Appeals) has allowed the appeal filed by the Respondents herein.

3. The revision application has been filed, mainly, on the grounds that none of the ARE-1s contained details regarding the duty paying documents; that original copies of ARE-1s were not submitted with the claims; that the ARE-1s were not signed jointly by the manufacturer and the merchant exporter; that the Shipping Bills do not carry any certificate by officer of Customs relating to quantity left on board of an aircraft on foreign run as stipulated in para 2.2, part-III of the Board's Excise Manual of Supplementary Instruction, 2005; that the documents submitted

like Daily Stock Sheets and Commercial invoices do not contain any reference of duty paying documents which make it difficult to ascertain the duty paid nature of goods exported; and that the Fuel Delivery Notes show that the subject ATF was supplied from bonded warehouse and not from duty paid stock. The cross objections dated 19.08.2019 have been filed by the Respondent.

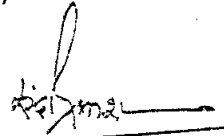
4. Personal hearing was fixed on 10.11.2021, 01.12.2021 & 17.12.2021. No one appeared for the Applicant department nor any request for adjournment has been received. In the personal hearing held on 17.12.2021, Sh. Jitendra Kumar, DGM made submissions for the Respondent and drew attention to the written reply dated 19.08.2019. He stated that the complete set of documents was submitted to the lower authorities to establish the duty paid nature of the goods. Since sufficient opportunities have been granted to the Applicant department, the matter is taken up for decision based on records.

5.1 The Government has carefully examined the matter. In the instant case, the Respondents herein claim to have procured duty paid ATF from M/s Indian Oil Corporation Ltd., under the cover of Central Excise Invoices, which was in turn supplied to the foreign going aircraft on the basis of Fuel Delivery Notes raised by them. It is the contention of the department that the ARE-1s do not contain any reference to the duty paying documents and the Fuel Delivery Notes indicate that the ATF was supplied from the bonded stock and not from the duty paid stock. The Commissioner (Appeals) has, on the basis of sample scrutiny, held that the duty paid nature of the goods is established. However, the Government observes that in a matter relating to rebate, the duty paid nature of the ATF supplied has to be established in respect of each consignment and a sample scrutiny of documents would not suffice.

5.2 The department has further contended that the quantity of fuel left on Board, which is required for determining the quantum of rebate as per para 3(d) of the Notification No. 19/2004-CE (NT), has not been certified by the officer of Customs

on the Shipping Bills. The Commissioner (Appeals) has, on the other hand, stated, without giving reference to any specific document or scrutiny carried out by him, that the quantum of ATF remaining in the aircraft prior to its foreign run has been duly certified by the Customs concerned officers. The Commissioner (Appeals) has also held that the lapses appear to be procedural in nature and the substantial benefit cannot be denied only on the grounds of such procedural lapses. The Government observes that 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 procedure specified in para 3 of the Notification No. 19/2004-CE (NT) and that in CBEC's Manual of Supplementary Instruction of 2005 cannot be raised to level of mandatory requirements. Following the judgment in *UM Cables Ltd. (supra)*, the Hon'ble Bombay High Court has, in the case of *Zandu Chemicals Ltd. vs. Union of India* {2015 (315) ELT 520 (Bom.)}, held that the procedural provisions are capable of substantial compliance. In the present case, while correctly holding that the rebate cannot be denied due to procedural infractions, the Commissioner (Appeals) has not established substantial compliance in respect of the procedural infractions. Further, as already held, the duty paid nature of the goods has to be established consignmentwise and not merely on the basis of sample scrutiny.

6. In view of the above, it would be in the interest of justice to remand the matter to the Commissioner (Appeals) for de-novo consideration keeping in view the observations above. The revision application is disposed of accordingly.



(Sandeep Prakash)

Additional Secretary to the Government of India


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

Order No. 286 /21-Cx dated 20-12-2021

Copy to:

1. M/s Bharat Petroleum Corporation Ltd., Haldia Coastal Installation, Patikhali, Haldia – 721 602.
2. The Commissioner (Appeals-II), CGST & Central Excise, Kolkata, Bamboo Villa, 3<sup>rd</sup> Floor, 169, A.J.C. Bose Road, Kolkata – 700 014.
3. PA to AS(RA).
4. Guard File.
5. Spare Copy.

ATTESTED

  
(लक्ष्मी राघवनी)  
(Lakshmi Raghavan)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi