

SPEED POST



**F. No. 375/61/DBK/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...28/12/21

Order No. 305/21-Cus. dated 28-12-2021 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Customs Act, 1962.

**Subject** : Revision Application filed under Section 129 DD of the Customs Act, 1962 against the Order-in-Appeal No.D-II/Prev./NCH/585/19-20 dated 20/08/2019 passed by the Commissioner of Customs (Appeals), NCH, New Delhi.

**Applicant** : M/s Indian Oil Corporation Ltd. Panipat.

**Respondent** : The Commissioner of Customs (Preventive), New Custom House, New Delhi.

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**ORDER**

A Revision Application No. 375/61/DBK/2019-RA dated 30/10/2019 has been filed by M/s Indian Oil Corporation Ltd., Panipat (hereinafter referred to as 'the Applicants') against the Order-in-Appeal No. D-II/Prev./NCH/585/19-20 dated 20/08/2019 passed by the Commissioner of Customs (Appeals), New Delhi. The Commissioner (Appeals) has upheld the Order-in-Original No. 1-3/DM/JC/DBK/2019 dated 12/06/2019 passed by the Joint Commissioner of Customs (Preventive), New Delhi.

2. The facts leading up to the present revision application are that the Applicants herein are registered with the Central Excise & CGST Division, Panipat for manufacturing of excisable goods, namely, petroleum products falling under Chapters 29, 38 and 39 of the Schedule to the Central Excise Tariff Act, 1985. The Applicants supplied excisable goods to the developers located in the Special Economic Zone (SEZ), without payment of central excise duty under Bond/LUT against Bills of Export issued by the Appraisers (Customs) of the SEZ, under Rule 30(5) of the Special Economic Zones Rules, 2006 read with section 7 of the Special Economic Zones Act, 2005. The Applicants thereafter filed three claims for claiming deemed duty drawback for supplies made to SEZ unit, amounting to Rs. 10,23,200/-, Rs. 7,15,524/- and Rs. 7,96,720/-, on 19/06/2018. The aforesaid drawback claims were rejected by the original authority, vide the abovesaid Order-in-Original dated 12/06/2019, on the grounds of discrepancies in the documents submitted to support the claims as well as on the grounds that the claims were barred by limitation. The appeal filed by the Applicants herein was rejected by the Commissioner (Appeals), vide the impugned Order-in-Appeal.

3. The revision application has been filed, mainly, on the grounds that the order passed by the Commissioner (Appeals) is a non-speaking order; that duty drawback claims are not time barred; that since the factum of export is established procedural infractions are condonable; that substantial conditions of the SEZ Rules have been complied with; that in a similar matter, deemed duty drawback claims have already

been settled and sanctioned; that no show-cause notice was issued before rejecting the duty drawback which is in violation of principles of natural justice; and that denial of duty drawback claim is against export promotion policy of the Central Government.

4. The personal hearing was held on 24/12/2021. Shri Sagar Verma, Advocate made submissions for the Applicant, in person, and filed written submissions dated 22.12.2021. He reiterated the contents of revision application and the written submissions dated 22.12.2021. Shri Ashok Kumar, AC, appearing in virtual mode, supported the orders of lower authorities.


5.1. The Government has carefully examined the matter. The Applicants have raised two preliminary issues relating to the violation of the principles of natural justice. Firstly, it is alleged that the original authority has rejected the drawback claims without issuing the show-cause notice. Secondly, the impugned Order-in-Appeal is claimed to be a non-speaking order.

5.2. In respect of the first issue, the Government observes that the deficiency memos were issued to the Applicants herein and the matter was also heard in person. In fact, it appears from the Order-in-Original that the deficiency memos were issued with the consent of Applicants herein, so that they could submit their reply. Therefore, the Applicants had full knowledge of the case against them and had their say in the matter both in writing and orally before the original authority. In view of this, the first contention of the Applicants that the Order-in-Original had been passed in violation of principles of natural justice cannot be sustained.

5.3. In respect of the second issue, it is noted that the original authority had rejected the drawback claims after recording detailed findings on each of the issues involved. However, the Government observes that the Commissioner (Appeals) has only recapitulated these findings of the original authority, without disclosing any reasons for agreeing with the same. Therefore, the contention of the Applicants that the impugned order is a non-speaking order merits acceptance. As such, the impugned Order-in-Appeal is set aside and the matter is remanded to the Commissioner

(Appeals) for de-novo consideration, in accordance with the principles of natural justice.

6. The revision application is allowed by way of remand to the Commissioner (Appeals), with the directions as above.



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Indian Oil Corporation Ltd., Panipat  
Petrochemical Complex,  
Village Baholi,  
Panipat – 132 103.

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Copy to:

1. The Commissioner of Customs (Preventive), New Custom House, Terminal 3, Near IGI Airport, New Delhi-110037.
2. The Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi-110037.
3. Sh. Sagar Verma, Advocate, 895, Sector-12, HUDA, Panipat (Haryana).
4. PS to AS(RA).
- ✓ 5. Guard File.
6. Spare Copy.

ATTESTED



(लक्ष्मी राघवन)

(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