

SPEED POST



F.No. 373/341//DBK/2014-RA
F.No. 380/23/DBK/2015-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHICAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue 28/11/22

Order No. 366-367/22-Cus dated 28-11-2022 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 129DD of the Custom Act, 1962.

Subject : Revision Application under Section 129 DD of the Customs Act 1962 against the Order-in-Appeal Nos. 94 & 95/2014 dated 16.06.2014 and 10/2015 dated 04.03.2015, passed by the Commissioner (Appeals) Central Excise & Service Tax, Large tax Payer Unit, Chennai.

Applicant : 1. M/s Indian Oil Corporation Limited.
2. The Commissioner of Customs, Chennai-IV, Chennai.

Respondent : 1. The Commissioner of Customs, Chennai-VII, Chennai.
2. M/s Indian Oil Corporation Limited.

ORDER

Two Revision Applications, bearing nos. 373/341/DBK/2014-RA dated 09.09.2014 and 380/23/DBK/2015-RA dated 09.06.2015, have been filed by M/s Indian Oil Corporation Limited, Chennai (herein after referred to as the Applicant-1) and the Commissioner of Central Excise & Service Tax, Large Tax payer Unit, Chennai, presently, Commissioner of Customs, Chennai-IV, Chennai (herein after referred to as the Applicant-2), respectively, against the Order-in-Appeal Nos. 94 & 95/2014 dated 16.06.2014, and 10/2015 dated 04.03.2015, respectively, passed by the Commissioner of Central Excise & Service Tax (Appeals), Large Taxpayer Unit, Chennai, vide which the appeals filed by the Applicant -1 against the Order-in-Original No. LTUC/276/2012-ADC dated 30.08.2012 and No. LTUC/347/2012-ADC dated 26.10.2012, have been rejected and the appeal filed against the Order-in-Original No. LTUC/316/2013-ADC dated 12.09.2013, has been allowed.

2. Brief facts of the case are that the Applicant-1 had filed several Shipping Bills for the export of goods, namely, Aviation Turbine Fuel and High Flash High Speed Diesel under Advance authorization Scheme. However, it appears that due to the withdrawal of duty on crude oil by the Government, the Applicant -1 filed two letters dated 27.06.2011 and 16.09.2011 with the jurisdictional authorities stating that due to the withdrawal of customs duty on crude oil, they were not in a position to use import benefit under Advance Authorization; that to enable them to avail export benefits for export of various refined products brand rate is required for claiming duty drawback benefit; and that they appeal to the Additional Commissioner, LTU, Chennai to arrange brand rate as soon as the relevant documents are required by the LTU from this office. The Applicant – 1 thereafter filed applications for fixation of brand rate in respect of ATF on 18.01.2012 and in respect of HFSHD on 09.05.2012, as per prescribed proforma along with DBK-I, DBK-II, DBK-IIA, DBK-III & DBK-IIIA statements. After following the principles of natural justice, vide Orders-in-Original dated 30.08.2012 & 26.10.2012, the original authority held that the applications filed on 18.01.2012 and 09.05.2012 are the valid applications under

Rule 6 of the Custom & Central Excise Duties and Service Tax Drawback Rules, 1995 and rejected the letters dated 27.06.2011 & 16.09.2011 as invalid. Vide OIO dated 12.09.2013, the original authority, subsequently, rejected the application for fixation of drawback rate dated 07.05.2012 (received on 09.05.2012) for non-submission of statutory documents. The OIO dated 30.08.2012 & 26.10.2012 have been upheld in appeal vide OIA dated 16.06.2014 whereas the OIO dated 12.09.2013 has been set aside vide OIA dated 04.03.2015.

3.1 The revision application (No. 373/341//DBK/2014-RA) has been filed, mainly, on the grounds that the letters dated 27.06.2011 and 16.09.2011 are valid and should be considered as an application for fixation of brand rate under Rule 6 ibid and all documents submitted subsequently should be considered in continuation of the same.

3.2 The revision application (No. 380/23/DBK/2015-RA) has been filed, mainly, on the grounds that the Applicant-1 had not submitted the brand rate fixation application along with the documents, as specified in Board's Circular No. 14/2003-Cus dated 06.03.2003. Hence, the same can not be considered as a valid application under Rule 6 of the Customs and Central Excise Duties Drawback Rules, 1995.

4. Personal hearing in the matter was fixed on 26.09.2022, 14.10.2022, 28.10.2022 and 15.11.2022. In the hearing held, in virtual mode, on 15.11.2022, Sh. Muthu Venkatraman, Advocate appeared for M/s IOCL and submitted the following:

- (i) He supported the Order of Commissioner (Appeals) dated 04.03.2015 on the basis of compilation filed on 30.09.2022.
- (ii) He reiterated the contents of the RA No. 373/341/DBK/2014-RA.

Ms. Vadivukarasai, Deputy Commissioner, Air Cargo Complex made submissions in respect of RA No. 373/341/DBK/2014-RA and stated that pursuant to the letter

dated 27.06.2011 of M/s IOCL, the jurisdictional Commissioner had allowed conversion of certain Shipping Bills into Drawback SBs and consequently an amount of approx. Rs. 3 crores had been paid to M/s IOCL. The matter is settled to this extent between the parties. For remaining Shipping Bills, the dispute remains in which respect she supported the Order-in-Appeal dated 16.06.2014. Sh. Venkatraman for IOCL confirmed the factual position narrated by Ms. Vadivakurasai, Deputy Commissioner. Both parties were, therefore, requested to I submit Written Synopsis, in this regard, latest by 21.11.2022. Sh. Ezhilarasan, Assistant Commissioner made submissions in respect of RA No. 380/23/DBK/2015-RA and reiterated the contents thereof. He also highlighted that the case includes exports made from Chennai Port & Tuticorin Port. In separate proceedings, the Commissioner of Customs, Tuticorin has disallowed the conversion of SBs into DBK SBs whereas in respect of Chennai Port, the matter of conversion is still under consideration. Sh. Venkatraman for IOCL submitted that they have challenged the Order of Commissioner, Tuticorin in respect of conversion of SBs before CESTAT and the appeal is pending and they will furnish a copy of the full set of appeal papers filed before CESTAT by Monday, 21.11.2022. Commissioner of Customs, Chennai – VII, Air Cargo Complex, Chennai vide e mail dated 21.11.2022 submitted a synopsis. M/s Indian Oil Corporation Limited vide email dated 23.11.2022 also submitted written submissions which has been taken on record.

5. The Government has examined the matter carefully. It is observed that the Applicant -1 had filed several Shipping Bills for the export of goods declared as Aviation Turbine Fuel (ATF) and High Flash High Speed Diesel (HFHSD) under Advance Authorization Scheme. However, with the withdrawal of Customs duty on crude oil, the Applicant-1 had informed the jurisdictional authority, i.e., LTU that to enable them to avail export benefits brand rate was required and that they appeal to arrange brand rate as soon as relevant documents are received by LTU. In this regard, two identically worded letters dated 27.06.2011 and 16.09.2011 were submitted to the LTU, in respect of ATF and HFHSD, respectively. Original authority, vide the above mentioned Orders-in-Original dated 30.08.2012 and 26.10.2012,

rejected the letters dated 27.06.2011 & 16.09.2011 as invalid but treated the subsequent applications filed on 18.01.2012 and 09.05.2012 as valid. On perusal of letters dated 27.06.2011 and 16.09.2011, it is evident that they are bereft of any details whatsoever and merely disclose an intent to claim benefit of drawback. Thus, it is not a case of deficient application, as sought to be made out by the Applicant-1 but it is a case where letters were filed with absolutely no material particular. In fact, Applicant -1 was itself aware that the brand rate can be fixed only when relevant documents are filed, and, therefore, specifically appealed to the concerned authorities to "arrange brand rate as soon as relevant documents are received." It is also apparent that the letters dated 27.06.2011 and 16.09.2011 do not fulfil any of the requirements of Rule 6 ibid. Therefore, the Government does not find any infirmity in the OsIA dated 16.06.2014.

6. As regards, the matter involved in the RA No.380/23/DBK/2015-RA, the Government observes that in this case the original authority has, vide OIO dated 12.09.2013, rejected the application for brand rate dated 07.05.2012 (filed on 09.05.2012) in respect of HFHSD. It is further observed that this application dated 07.05.2012 (filed on 09.05.2012) had been earlier held to be valid application, vide OIO dated 26.10.2012. The reason for this change of stance appears to be non-submission of statutory documents along with this application. The Government observes that while holding the application dated 07.05.2012 as valid, vide OIO dated 26.10.2012, the original authority was aware that there were certain deficiencies in this application as well but still was "inclined to treat this application as a valid one as at least they have filed the application in prescribed form with annexures like DBK-I, II, IIA, III, IIIA etc. and basic details like quantity of export, imports etc. were available" (para 10.4 of OIO dated 26.10.2012). The department was not aggrieved with this OIO dated 26.10.2012 as no appeal appears to have been preferred against it by the department. Therefore, it was not open to the department to reject the application, subsequently, vide OIO dated 12.09.2013 for the deficiencies already noticed while passing the OIO dated 26.10.2012. As such, there is no merit in the instant revision application filed by the department.

7. In view of the above, the revision applications are rejected.


(Sandeep Prakash)

Additional Secretary to the Government of India

1. M/s. Indian Oil Corporation Ltd,
(Marketing Division) Southern Region,
Indian Oil Bhavan, 139, M.G. Road,
Chennai-600034.

2. The Commissioner of Customs,
Chennai-IV Commissionerate, Custom
House, 60, Rajaji, Salai,
Chennai-600001.

Order No. 366-367/22-Cus dated 28-11-2022

Copy to:

1. The Commissioner of Customs, Chennai-VII, New Custom House, Meenabakkam, Chennai-600027
2. The Commissioner of Customs (Appeals-) 60, Rajaji Salai, Custom House, Chennai-600001
3. Sh. Muthu Venkatraman, Advocate, Bhartis Legal, New No. 7, Old No. 4, Justice Sundaram Road, Mylapore, Chennai 600004
4. PA to AS(RA)
5. Guard File
6. Spare Copy

ATTESTED
