

SPEED POST



F.No. 195/61-A/2016-R.A.
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 20/9/22

Order No. 39/2022-CX dated 20-09-2022 of the Government of India, passed by **Sh. Sandeep Prakash**, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Application filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. MAD/CEX/000/APP/20/2016 dated 22.02.2016 passed by the Commissioner of Central Excise (Appeals-I), Coimbatore at Madurai.

Applicant : M/s Shell MRPL Aviation Fuels & Service Ltd., Madurai.

Respondent : The Commissioner of CGST & Central Excise, Madurai.

ORDER

A revision application no. 195/61-A/2016-RA dated 16.05.2016 has been filed by M/s Shell MRPL Aviation Fuels & Services Ltd., Madurai (hereinafter referred to as the Applicant) against the Order-in-Appeal No. MAD/CEX/000/APP/20/2016 dated 22.02.2016, passed by the Commissioner of Central Excise (Appeals-I), Coimbatore at Madurai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. MAD-CEX-000-ASC-015-2015 dated 11.06.2015 passed by the Assistant Commissioner of Central Excise, Madurai-I, vide which 7 rebate claims filed by the Applicants herein were rejected.

2. Briefly stated, the Applicants herein were registered as a dealer of excisable goods and engaged in supply of Aviation Turbine Fuel (ATF) at Madurai Airport. The Applicants had filed 7 rebate claims, totally amounting to Rs. 64,52,245/-, in respect of Central Excise duty paid on the ATF said to have been supplied to the foreign going aircrafts at the Madurai Airport, relating to the months of September 2013 to March 2014. Scrutiny of the above claims revealed that basic documents such as AER1s and Shipping Bills had not been verified by Central Excise/Customs as required. It was also observed that part of the claim amounting to Rs. 4,87,734/-, pertaining to the period 01.09.2013 to 25.09.2013, was time barred as the claim had been received one year after the export, in contravention of the provisions of Section 11B of the Central Excise Act. The original authority, after following due process, rejected the rebate claims. 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 although their company commenced fuelling operation at Madurai airport and made exports by fuelling foreign bound aircrafts, the officials of their company were not given the pass for entering into customs office located inside the

airport terminal. As such, their company could not file and obtain the customs authorizations in Shipping Bills and ARE-1s. In view of this, the company could not submit the ARE-1 applications and Shipping Bills duly authenticated by Customs authorities for no fault of the company but the fuel delivery notes duly acknowledged by the captain of the aircraft and confirmation from the airline company for fuel supplied have been submitted. It is submitted that the Commissioner (Appeals) erred by not condoning the procedural mistake that ARE-1s and Shipping Bills are not signed by the Customs and Central Excise officers, and, therefore, the impugned Order-in-Appeal is liable to be set aside. Further, written submissions have been filed, vide email dated 16.09.2022.

4. Personal hearing was held, in virtual mode, on 19.09.2022. Shri Asmat Khan, CA made submissions on behalf of the Applicants and reiterated the contents of the RA. He highlighted that during the relevant period M/s Reliance had been refuelling the aircraft on their behalf and they themselves had no access to the airport. Hence, the Shipping Bills and ARE-1s could not be endorsed by the Customs officers. This is merely a procedural violation and rebate should not be denied on this ground. No one appeared for the Respondent department nor any request for adjournment has been received. It is, therefore, presumed that the Department has nothing to add in the matter.

5. The Government has carefully examined the matter. The rebate claims have been rejected, mainly, for the reason that the Applicants herein had failed to submit the duly authenticated Shipping Bills and ARE-1s to support their claim. It is the contention of the Applicants that the ARE-1s and Shipping Bills could not be authenticated as they did not have the pass to enter the Airport terminal where the Customs offices were located. In the personal hearing, it has been explained that, during the relevant period, M/s Reliance had been refuelling on their behalf and they themselves had no access to the airport. It is their contention that the authentication of these documents is merely a procedural requirement, contravention whereof could not lead to rejection of the claims. The Government, however, observes that Commissioner (Appeals) has correctly pointed out that Section 50 of the Customs Act, 1962 requires the exporter of

any goods to make an entry thereof by presenting to the proper officer in case of goods to be exported in a vessel or aircraft, a Shipping Bill in the prescribed form. Further, Section 51 provides that where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and any charges payable under this Act in respect of the same, he may make an order permitting clearance and loading of the goods for exportation. This order is commonly known as Let Export Order (LEO). In the present case, the Shipping Bills have not been filed before the proper officer nor has the proper officer made order permitting clearance and loading of the goods for exportation. As such, it is not a case where Shipping Bills are not authenticated by the proper officer rather it is a case where Shipping Bills have not been filed at all. Further, there is no LEO by the proper officer permitting export of goods. Thus, the factum of exports, in accordance with law, itself is not established. The plea that they could not get the Shipping Bills and ARE-1s authenticated by the customs officers as they did not have entry pass to the airport terminal where the Customs offices are located, appears to be specious in as much as, admittedly, M/s Reliance were supplying the fuel on their behalf. Nothing prevented the Applicants to file the Shipping Bills before the proper officer and obtain necessary LEO, through M/s Reliance, who were, in effect, acting as their agents. The ARE-1s could also have been got authenticated in a similar manner. In these facts and circumstances of the case, the Government does not find any infirmity in the impugned Order-in-Appeal.

6. The revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

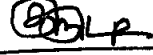
M/s Shell MRPL Aviation Fuels and Services Ltd.,
102, Prestige Sigma, Vittal Mallya Road
Bangalore – 560 001, Karnataka.

G.O.I. Order No. 39/22-CX dated 20-07-2022

Copy to: -

1. The Commissioner of CGST & Central Excise, Central Revenue Building, Bibikulam, Madurai – 625002.
2. The Commissioner of Central Excise (Appeals-I), Coimbatore at Madurai, Lal Bahadur Shastri Marg, C.R. Building, Madurai – 625002.
3. P.S. to AS (RA)
4. Guard File.
5. Spare Copy

ATTESTED



20.09.22

(लक्ष्मी राघवन)

(Lakshmi Raghavan)

अधुभाग अधिकारी / Section Officer

वित्त मंत्रालय (राजस्व विभाग)

Ministry of Finance (Deptt. of Rev.)

भारत सरकार / Govt. of India

नई दिल्ली / New Delhi