

**SPEED POST**



F.No. 195/122/SZ/2018-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... 14/03/23

Order No. 63/2023-CX dated 14-03-2023 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. VIZ-EXCUS-001-APP-267-17-18 dated 28.02.2018, passed by the Commissioner of Central Tax and Customs (Appeals), Visakhapatnam.

Applicant : M/s Bharat Petroleum Corporation, Visakhapatnam.

Respondent : The Pr. Commissioner of CGST & Central Excise, Visakhapatnam

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**ORDER**

A Revision Application No. 195/122/SZ/2018-RA dated 16.07.2018 has been filed by M/s Bharat Petroleum Corporation Ltd., Visakhapatnam (hereinafter referred to as the "Applicant"), against the Order-in-Appeal No. VIZ-EXCUS-001-APP-267-17-18 dated 28.02.2018, passed by the Commissioner of Central Tax and Customs (Appeals), Visakhapatnam. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, set aside the Order-in-Original No. 112/2015-16 (Reb) dated 29.10.2015, passed by the Deputy Commissioner of Customs, Central Excise & Service Tax, Division-II, Visakhapatnam.

2. Brief facts of the case are that the Applicant herein have a warehouse for receipt of non-duty paid Aviation Turbine Fuel (ATF) for supplies to foreign going aircraft. They are also registered as second stage dealer for purchase of duty paid ATF to be supplied to domestic aircraft. They filed a rebate application, on 08.04.2015, in respect of duty paid ATF supplied to foreign going aircraft for the period 19.05.2014 to 05.07.2014, amounting to Rs. 5,94,837/-. Upon verification of the rebate claim, it was noticed by the department that the Applicants had not supplied the Bills of Lading in respect of supplies made to the foreign going aircraft for verification of actual receipt of supplies by the person in-charge of the foreign going aircraft. Accordingly, a Show Cause Notice was issued to the Applicants seeking to reject the said rebate claim. However, upon consideration of the submissions made by the Applicants, the original authority, vide the aforesaid Order dated 29.10.2015, granted the rebate. On an appeal filed by the Department, the Commissioner (Appeals) has set aside the Order of the original authority, vide the impugned Order-in-Appeal.

3. The Revision Application has been filed, mainly, on the grounds that the exports were made from duty paid ATF in compliance with para 2(a) of the Notification No. 19/2004-CE; that they had been permitted mixed storage of duty paid and non-duty paid ATF in line with the Board's Circular No. 804/1/2005-CX dated 04.01.2005; that the verification of non-duty paid stocks during the disputed period is not mandatory for grant of benefit of rebate as per the judgment of Hon'ble Bombay High Court in the case of Indian Oil Corporation Ltd. vs Union of India {2015 (316) ELT 618 (Bom)}; that supplies were made to the foreign going aircraft and the rebate could not have been denied on the grounds that the foreign going aircraft had a domestic leg; and that as per para 3(d) of the Notification No. 19/2004 dated 06.09.2004, a special procedure for consumption on board an aircraft on foreign run has been prescribed which has been followed in this case; and that in other cases, the rebate has been granted in similar circumstances.

4. The personal hearing was held, in virtual mode, on 10.03.2023. Ms. Ankita Vashistha, Advocate appeared for the Applicant and reiterated the contents of the RA. No one appeared for the Respondent department nor any request for adjournment has been received. Hence, it is presumed that the department has nothing to add in the matter.

5. The Government has carefully examined the matter. It is observed that the Commissioner (Appeals) has allowed the departmental appeal broadly on two grounds : (i) Since the duty paid ATF was not exported directly from factory, it was required to correlate all invoices for grant of rebate, and (ii) Since the fuel was supplied to aircraft on Visakhapatnam-Hyderabad-Dubai sector, which has a domestic leg between Visakhapatnam-Hyderabad, stocks on board after completion of internal flight from Visakhapatnam-Hyderabad have to be certified prior to its foreign run.

6. The Government observes that the Applicants herein are registered with the Department for supply of non-duty paid as well as duty paid ATF. The Applicants have also been granted permission for mixed bonding of ATF of duty paid as well as non-duty paid nature. Nothing has been placed on record to indicate any discrepancy in the warehousing of the duty paid and non-duty paid goods. In the case of Indian Oil Corporation Ltd. vs UOI {2015 (316) ELT 618 (Bom.)}, the Hon'ble Bombay High Court has held that if duty paid ATF is supplied from a registered warehouse, then, there is no necessity of looking into other compliances. Therefore, the findings of Commissioner (Appeals) requiring to correlate all invoices for grant of rebate cannot be sustained, specially when disclaimer certificates of suppliers of duty paid ATF are on record.

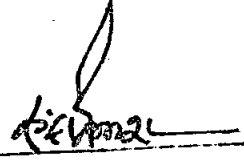
7. Another finding of the Commissioner (Appeals) is that since the goods have been supplied to aircraft which before proceeding abroad, has a domestic leg, the stocks on board have to be verified at the airport from where the foreign run actually begins. The Government observes that the term "foreign-going aircraft" is not defined under the Central Excise Act, Rules or the Notification concerned. However, in terms of Section 2(21) of the Customs Act, 1962, *"foreign-going vessel or aircraft" is defined to mean as "any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes:*

- (i) *any naval vessel of a foreign Government taking part in any naval exercises;*
- (ii) *any vessel engaged in fishing or any other operations outside the territorial waters of India;*

(iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever".

It is apparent from the definition above that an aircraft engaged in the carriage of goods and passengers between any airport in India and any airport outside India is a foreign-going aircraft, irrespective of whether it touches on any intermediate airport in India. Therefore, the subject findings of the Commissioner (Appeals) also cannot be sustained.

8. In view of the above, the Revision Application is allowed and the impugned Order-in-Appeal is set aside.



(Sandeep Prakash)

Additional Secretary to the Government of India

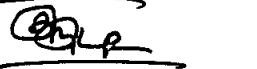
M/s Bharat Petroleum Corporation Ltd.,  
Visakha AFS, Visakhapatnam Air Port,  
NAD Kotha Road, (PO),  
Visakhapatnam – 530 009.

G.O.I. Order No. 63 /23-CX dated 14-03-2023

Copy to: -

1. The Principal Commissioner of CGST & Central Excise, Visakhapatnam GST Bhawan, Port Area, Visakhapatnam – 530 035.
2. The Commissioner (Appeals), Central Tax & Customs, 4<sup>th</sup> Floor, Custom House, Port Area, Visakhapatnam-530 035.
3. Ms. Ankita Vashistha, Senior Advocate, Economic Laws Practice, 9<sup>th</sup> Floor, Mafatlal Center, Vidhan Bhawan Marg, Nariman Point/Mumbai-400 021.
4. PPS to AS (RA)
5. Guard File.
6. ✓ Spare Copy

ATTESTED



14.03.2023

(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