

SPEED POST



F. No. 198/16/2015-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. 64/2023-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 Orders-in-Appeal Nos. 24-25-CE/APPL-LKO/2015 dated 27.01.2015, passed by the Commissioner (Appeals), Lucknow.

Applicants : The Commissioner of CGST & Central Excise, Lucknow.

Respondent : M/s Hindustan Petroleum Corporation Ltd., Lucknow.

ORDER

A Revision Application No. 198/16/2015-RA dated 27.04.2015 has been filed by the Commissioner of Customs, Central Excise & Service Tax, Lucknow, presently, Commissioner of CGST & Central Excise, Lucknow (hereinafter referred to as the Applicant department), against Orders-in-Appeal Nos. 24-25-CE/APPL-LKO/ dated 27.01.2015, passed by the Commissioner (Appeals), Lucknow. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, set aside the Orders-in-Original, bearing No. Reb-194/2013/DC/Div.-I/LKO & No. Reb-195/2013/DC/Div.-I/LKO both dated 17.01.2014, passed by the Deputy Commissioner of Central Excise, Division-I, Lucknow, in respect of rebate claims filed by M/s Hindustan Petroleum Corporation Limited (HPCL), Lucknow (hereinafter referred to as the Respondents).

2. Briefly stated, the Respondents herein filed 07 rebate claims in respect of duty paid on ATF (Aviation Turbine Fuel) supplied to foreign going aircraft. These claims, totally amounting to Rs. 14,29,163/- and Rs. 16,94,600/-, were rejected by the original authority, vide the aforesaid Orders-in-Original dated 17.01.2014, on the grounds that the documents furnished to support the claims of rebate had serious discrepancies and the duty paid character of the goods could, therefore, not to be corroborated from the documents submitted. The appeals filed by the Respondents herein have been allowed by the Commissioner (Appeals), vide the impugned Order-in-Appeal.

3. The Revision Application has been filed by the Applicant department, mainly, on the grounds that the duty paid character of the goods, which is paramount in claiming the rebate of duty, is not corroborated by the documents covering the goods; that details of duty payment have not been mentioned on the documents and the invoices covering the goods have not been issued under Rule 11 of the Central Excise Rules, 2002; that, therefore, the duty paid character of the goods cannot be established; that, in the instant case, duplicate and triplicate copy of ARE-1s have not been received for verification of Central Excise duty paid as envisaged under Notification No. 19/2004-CE (NT) dated 06.09.2004; that, therefore, the order of Commissioner (Appeals) cannot be sustained.

4. The revision application was decided by the Government, vide GOI Order No. 368/2017-CX dated 18.12.2017 and the Order-in-Appeal impugned herein was set aside. The Respondents herein, thereafter, filed WP No. 9298 of 2018 (TAX), before the Hon'ble Allahabad High Court, Lucknow Bench. The said Writ Petition has been decided by the Hon'ble High Court, vide Order dated 30.08.2022, in following terms:

"In view thereof and on the limited ground of non-hearing of either of the parties, the revisional order dated 18.12.2017 passed in Revision

Application No. 198/16/2015-RA (Annexure-1) is set aside and the matter is remanded for deciding the matter afresh after giving an opportunity of hearing to the parties concerned in accordance with law with all expedition."

In compliance of the aforesaid Order dated 30.08.2022 of the Hon'ble High Court, the matter is taken up for decision afresh.

5. Personal hearing in the matter was fixed on 08.02.2023. However, at the request of the Respondents, the hearing was adjourned to 27.02.2023. The matter was further adjourned to 10.03.2023 as the Applicant department did not attend the hearing fixed on 27.02.2023. In the personal hearing held, in virtual mode, on 10.03.2023, Sh. Yatesh Mani, DC appeared for the Applicant department and reiterated the contents of the RA. Sh. Dheeraj Sharma & Sh. Samarendra Jha, on behalf of HPCL, explained that the discrepancies that were pointed out by the department were adequately explained in the reply dated 19.10.2013 to the original authority. Therefore, the Commissioner (Appeals) has decided their appeal correctly.

6.1 The Government has carefully examined the matter. From the Orders dated 17.01.2014, passed by the original authority, it would appear that the original authority had found the rebate claims to be inadmissible as the duty paid character of the goods could not be established, mainly, for the following reasons:

- (i) The goods, in the present case, are said to have been procured by HPCL, Lucknow from HPCL, Bijwasan, New Delhi on stock transfer basis. The invoices issued by the HPCL, Bijwasan, are not the Excise invoices, as per the Rule 11 of the Central Excise Rules, 2002, as neither the name of supplier was mentioned on the documents nor the Central Excise duty payment particulars were mentioned thereon.
- (ii) Value of the goods as declared on the documents issued by HPCL, Bijwasan is significantly lower than the value of the goods as mentioned on the invoices issued by M/s IOCL, Bijwasan from whom the duty paid goods are said to have originated.
- (iii) The details, such as number and date of invoice under which duty was paid, have been left blank in the ARE-1s covering the supply of goods.
- (iv) Duplicate and triplicate copies of the ARE-1s have not been received for verification with reference to the original copy and, hence, duty paid on the ATF is not verifiable.

The Commissioner (Appeals) has, however, allowed the appeals filed by the Respondents by holding that with reference to other documents produced the duty paid character of the goods is established. The Order of Commissioner (Appeals) is silent about the documents which have been verified, in absence of the prescribed documents, to hold so. Further, the Government observes that the Order of

Commissioner (Appeals) contains no issue-wise findings, except in respect of the valuation of the goods. In respect of the valuation, the Commissioner (Appeals) has accepted the submission of the Respondents herein that the reason for difference in value of ATF procured from IOCL, Bijwasan vis-a-vis the value declared by HPCL, Bijwasan is due to the fact that the VAT and excise components are not taken into consideration for the bills raised for stock transfer as well as to the Aviation Companies. However, as already stated, the Order of Commissioner (Appeals) has no specific findings in respect of the other three issues.

6.2 Undoubtedly, the factum of exports and establishment of the duty paid character of the goods are the foremost requirements for grant of rebate under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) Dated 06.09.2004. The duty paid character of the goods is, in terms of the said notification and instructions issued in this behalf, verified with reference to the duty payment particulars mentioned on the ARE-1 and the excise invoices. The original copy of the ARE-1 is also required to be compared and verified with the triplicate copy of the ARE-1. In the present case, it is not disputed that the invoices covering the goods received by HPCL, Lucknow from HPCL Bijwasan do not contain the duty payment particulars. The details of duty paid are also not forthcoming on the ARE-1. In fact, it is noticed from the Orders of the original authority that, in the Column 11 of the relevant ARE-1s, amount of rebate claimed is mentioned as: 'NIL NOT APPLICABLE-EXPORT SALE OF NON DUTY PAID ATF.' Thus, ARE-1s represent that no duty was paid on the goods supplied to the foreign going aircraft. Further, it is also not disputed that duplicate and triplicate copies of the ARE-1s have not been produced for verification, which is a requirement of the Notification dated 06.09.2004.

6.3 The Government observes that the Hon'ble Allahabad High Court (i.e., Hon'ble jurisdictional High Court) has, in the case of Vee Excel Drugs & Pharmaceuticals Pvt. Ltd. vs. Union of India {2014 (305) ELT 100 (All.)}, held that the ARE-1 procedure specified in the Notification dated 06.09.2004 is mandatory. The following extracts from the judgment of the Hon'ble High Court are instructive for the issue in hand:

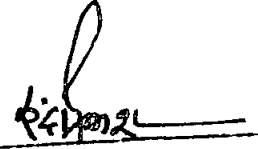
"20. The purpose of aforesaid procedure has been highlighted by respondent No. 1 in the impugned order dated 18-6-2013 by observing in Paras 9.4 and 9.5 that the ARE-I application is the basic essential document for export of duty paid goods under rebate claim. The customs certification of ARE-I proves export of goods but in absence of duly certified copies of ARE-I, rebate sanctioning authority would have no chance to compare these documents with triplicate copy of ARE-I, as stipulated in Notification dated 6-9-2004 and has no material to satisfy

the procedure laid down in notification dated 6-9-2004 with respect to filing of ARE-I is mandatory."

6.4 As already brought out, in the present case, the duty payment particulars are not forthcoming on the ARE-1s. In fact, there is an endorsement on the ARE-1s that the goods are non-duty paid. The invoices issued also do not contain the duty payment particulars. Further, other copies of the ARE-1s, as prescribed, have also not been produced to enable verification of the duty paid nature of the goods. Thus, the ratio of the Hon'ble Allahabad High Court's judgment in the case of Vee Excel Drugs & Pharmaceuticals Pvt. Ltd. (supra) applies on all fours to the present case.

6.5 As such, the order of Commissioner (Appeals) impugned herein cannot be sustained.

7. In view of the above, the revision application is allowed and the Order-in-Appeal impugned herein is set aside.



(Sandeep Prakash)

Additional Secretary to the Government of India

The Commissioner of CGST & Central
Excise, Lucknow, GST Bhavan,
7-A, Ashok Marg, Lucknow-226001.

G.O.I. Order No. 64/23-CX dated 14-03-2023

Copy to: -

1. M/s Hindustan Petroleum Corporation Limited, TC-13 V/V, Vibhuti Khand, Gomti Nagar, Lucknow-226010.
2. The Commissioner (Appeals), Customs, Central Excise & Service Tax, Hall No. 2, 8th Floor, Kendriya Bhavan, Aliganj, Lucknow-226024.
3. M/s Hindustan Petroleum Corporation Limited, 7th Floor, North Tower Scope Minar, District Centre, Laxmi Nagar, New Delhi-110092.
4. PPS to AS (RA)
5. Guard File
6. Spare Copy.
7. Notice Board.

ATTESTED


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