

**SPEED POST**



F. No. 195/193/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. 31/03/23

Order No. 70/2023-CX dated 31-03-2023 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-326-17-18 dated 28.03.2018, passed by the Commissioner of Customs & Central Excise (Appeals), Visakhapatnam.

Applicants : M/s Hindustan Petroleum Corporation Ltd., Visakhapatnam.

Respondent : The Pr.Commissioner of CGST, Visakhapatnam.

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**ORDER**

A Revision Application No. 195/193/SZ/2018-RA dated 17.07.2018 has been filed by M/s Hindustan Petroleum Corporation Ltd., Visakhapatnam (hereinafter referred to as the Applicant ), against Order-in-Appeal No. VIZ-EXCUS-001-APP-326-17-18 dated 28.03.2018, passed by the Commissioner of Customs & Central Excise (Appeals), Visakhapatnam. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, set aside the Order-in-Original No. 109/2015-16 (Rebate) dated 09.10.2015, passed by the Deputy Commissioner of Central Excise, Division-II, of then Visakhapatnam -I Commissionerate..

2. Briefly stated, the Applicants herein filed rebate claim dated 30.05.2014, amounting to Rs. 37,11,747/-, in respect of duty paid on ATF (Aviation Turbine Fuel) supplied to foreign going aircraft for the period 01.06.2013 to 25.06.2014. After following the due process of law , the original authority sanctioned the refund claim . Aggrieved with the OIO passed by the original authority, the department (Respondent herein) preferred an appeal with the jurisdictional Commissioner (Appeals) on the grounds that correlation of first stage duty paid documents with final export documents has not taken place; that nowhere in the OIO , it was mentioned that the duty paid goods and the goods exported were one and the same and without verification, it was concluded that the subject export goods were indeed the same duty paid goods and that the original authority condoned many procedural lapses in the rebate claim. The Applicants herein also submitted cross-objections during the Appellate proceedings. The Commissioner ( Appeals) allowed the appeal filed by the Respondent department herein and set aside the OIO passed by the original authority, vide the impugned OIA.


3 The Revision Application has been filed by the Applicants, mainly, on the grounds that they have fulfilled all the substantial conditions of Notification No. 19/2004 dated 06.09.2004 and are therefore eligible for rebate; that substantive

benefit cannot be denied for procedural infractions; that Notification No. 19/2004-CE(NT) must be construed in the manner in which it was issued; that denial of rebate is against the Foreign Trade Policy of the Government and that the Commissioner (Appeals), without considering the documents provided by the Applicants herein that established the co-relation, has allowed the departmental appeal.

4 Personal hearing, in virtual mode, was held on 29.03.2023. Sh. Shantanu Kumar, Advocate appeared for the Applicant and requested that synopsis & compilation emailed on 29.03.203 may be taken on record. He reiterated the contents of the RA with the assistance of the synopsis and case laws cited. 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 observing that *"there is violation of Rules/conditions and limitations and the respondent has failed to follow the prescribed procedure as a result of which there is no correlation between stocks to establish duty-paid nature of goods supplied so as to be eligible for rebate claim"*. However, while arriving at this conclusion, the Commissioner (Appeals) has failed to examine and record his findings on the detailed cross-objections filed by the Applicants herein (Respondent before the Commissioner (Appeals)). Thus, the Order-in-Appeal impugned herein is a non-speaking order. As such, it will be in the interest of justice that the matter is remanded back to Commissioner (Appeals) with the direction to decide the case on merits and pass a speaking order, inter-alia, after due consideration of the submissions made by the Applicants herein, i.e., the Respondent before him, in the cross-objections vis-à-vis the grounds raised by the appellant (Respondents herein) in the appeal.

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

  
(Sandeep Prakash)

Additional Secretary to the Government of India


M/s Hindustan Petroleum Corporation Limited,  
Visakha AFS, Visakhapatnam Airport,  
NAD Kotha Road, Visakhapatnam-530039 .

G.O.I. Order No. 70/23-CX dated 3/03/2023

Copy to: -

1. The Pr. Commissioner of CGST & Central Excise, Visakhapatnam, GST Bhavan, Port Area, Visakhapatnam-530035 .
2. The Commissioner of CGST (Appeals), 4<sup>th</sup> Floor, Custom House, Port Area, Visakhapatnam-530035.
3. M/s Lakshmikumaran & Sridharan, Attorneys, No.5, Link Road, Jangpura Extn., New delhi-110014.
4. PPS to AS (RA)
5. Guard File
6. Spare Copy.
7. Notice Board.

ATTESTED

  
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