

SPEED POST



F.No. 195/140/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. 25/04/23

Order No. 81/2023-CX dated 25-04-2023 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. COC-EXCUS-000-APP-360-2018 dated 07.05.2018, passed by the Commissioner, Central Taxes & Central Excise (Appeals), Cochin.

Applicants : M/s Bharat Petroleum Corporation Ltd., Cochin.

Respondent : Pr. Commissioner of CGST & Central Excise, Cochin.

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ORDER

The Revision Application No. 195/140/SZ/2018-RA dated 01.08.2018 has been filed by M/s Bharat Petroleum Corporation Ltd., Cochin (hereinafter referred to as the Applicant), against the Order-in-Appeal No. COC-EXCUS-OOO-APP-360-2018 dated 07.05.2018, passed by the Commissioner (Appeals), Central Taxes & Central Excise, Cochin. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the appeal filed by the Applicants herein against the Order-in-Original No. 136/2016(R) dated 30.12.2016, passed by the Assistant Commissioner of Central Excise, Muvattupuzha Division.

2. Briefly stated, the Applicants herein filed a rebate claim, on 03.10.2016, for Rs. 4,01,67,779/- for rebate of duty paid on Raw Naphtha exported vide ARE-1 No. 01/2016-17 dated 17.05.2016. On scrutiny of the claim, it was noticed that the Applicant had exported 9354.888 MTs of Raw Naphtha, vide Shipping Bill No. 119 dated 15.05.2016, ARE-1 No. 01/2016-17 dated 17.05.2016 and Commercial Invoice No. INV.TRAF.18052016B dated 23.05.2016 to Singapore. It was further noticed that the assessable value shown in the ARE-1 was Rs. 24,00,26,781/- and the applicable duty @ 14% worked out to Rs. 3,36,03,749/-. Hence, the eligible rebate amount was Rs. 3,36,03,749/- only. Accordingly, Show Cause Notice No. 29/2016 (R) dated 18.11.2016 was issued to the Applicants herein seeking to reject the balance amount. The Original Authority, vide the aforesaid Order-in-Original dated 30.12.2016, sanctioned the rebate amount of Rs. 3,36,03,749/- and rejected the balance amount of Rs. 65,64,030/-. The appeal filed by Applicants herein has been rejected by the Commissioner (Appeals).

3. The Revision Application has been filed, mainly, on the grounds that the Applicants had cleared 16,462.733 MTs of Raw Naphtha on which a total amount of Rs. 7,00,94,561/- was paid as Central Excise duty; that, out of the total quantity of 16,462.733 MTs, 9354.888 MTs was exported; that duty amounting to Rs. 4,01,67,779/- was paid on the exported quantity; that actual duty paid needs to be considered for grant of refund and not an amount claimed in the Form ARE-1; that a transcription error in ARE-1 is not a reason to reject substantive refund of

duty paid; that in case of difference in ARE-1 and other export documents, the authority should be guided by substantial factual evidence; and that the procedural lapses should not be the reason for rejecting the substantial benefits.

4. Personal hearing in the matter was held on 10.03.2023. Ms. Ankita Vashishtha, Advocate appeared for the Applicant and reiterated the contents of the RA. She requested for one weeks' time to make additional submissions on factual aspects of the matter. Subsequently, additional submissions dated 17.03.2023 were filed. Pursuant thereto, another hearing, in virtual mode, was held on 24.04.2023. Ms. Ankita Vashishtha, Advocate appeared for the Applicant and reiterated the contents of the RA as well as the additional submissions dated 17.03.2023. She highlighted that there is no dispute regarding factum of export and the duty paid amount. Hence, the balance rebate may be allowed. No one appeared for the respondent department on any of the dates fixed for hearing nor any request for adjournment has been received. Hence, it is presumed that the department has nothing to add in the matter.

5.1 The Government has carefully examined the matter. It is observed that, as per ARE-1 No. 01/2016-17 dated 17.05.2016, 9354.888 MTs of Naphtha with the declared value of Rs. 24,00,26,780.82 was exported with total duty paid amount indicated as Rs. 3,36,03,749.21. The corresponding Shipping Bill No. 119 dated 13.05.2016 showed matching quantity but assessable value is indicated as Rs. 25,47,72,192.60. Further, as per details of excise invoices compiled in para 6 of the instant RA, the total assessable value is shown as Rs. 28,69,12,707/- with corresponding duty paid @ 14% amounting to Rs. 4,01,67,779/-. It is the contention of the Applicants that the assessable value reflected in the invoices and the corresponding duty paid is the correct amount. They have admitted that there were inadvertent errors in the other documents. The Government also observes that the Commissioner (Appeal) has rejected the appeal filed by the Applicants herein based on the observations made in para 14 of the impugned Order-in-Appeal, which is reproduced below:

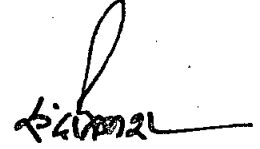
"14. It is seen that a quantity of 16,462.733 MT of raw naphtha was cleared from the refinery on payment of duty of Rs. 4,01,67,779/- (as per

the first Table in the grounds of Appeal) to their installation, out of this it is admitted that 7,107.85 MT (as per Table-I) was transferred to Cheppad depot vide various invoices and the balance 9354.888 MT was exported vide the ARE-1 dated 15.05.2016. Thus, it is clear that the whole of duty paid raw naphtha received from the refinery was not exported but a portion was transferred to Cheppad depot. Hence appellant cannot claim refund of the entire duty (i.e. Rs. 4,01,67,779/-) paid on the raw naphtha. It is also seen that assessable value of exported raw naphtha differs in the shipping bill, where it is shown as Rs. 25,47,72,193/- and in ARE-1 it is mentioned as Rs. 24,00,26,781/-. The circular F.No. 209/29/99-CX.6 dated 3.2.2000 states that the duty on export goods should be paid by applying market rate as it prevails, at the time the duty is paid on such goods and once value is determined and duty is paid, rebate as shown on AR-4 has to be allowed equivalent to the duty paid. I find that the value shown in the ARE-1 is taken for arriving at the refund amount in the impugned order. Therefore, I find no reason to interfere with the findings in the impugned order."

5.2. The Government, however, finds that the first observation of Commissioner (Appeals) that the total quantity of 16,462.733 MTs was cleared on payment of duty of Rs. 4,01,67,779 is at variance with the amount of Rs. 7,00,94,561/- stated to have been paid in para 9 of the Order-in-Original dated 30.12.2016. No reasons are forthcoming for recording this difference. Further, the duty is said to have been paid as per the assessable value declared on the respective excise invoices, which is not denied. Therefore, the claim of the Applicants that the ARE-1 inadvertently indicates incorrect assessable value and the corresponding duty paid amount needs to be verified with the original excise records merits consideration. There is also merit in the contention of the Applicant that in case of mismatch in the documents, due to inadvertent errors on their part, the rebate claim should be decided after due verification from records. Needless to add that if the duty said to have been paid as per excise invoices was actually payable and has been so paid, the rebate claim will have to be decided accordingly.

5.3 Keeping this in view, the Government considers that it would be in the interest of justice that the matter is remanded to the Commissioner (Appeals) with a direction to consider the matter afresh, after due factual verification from records and keeping in view the observations made above. The Commissioner (Appeals), while deciding the matter de-novo, shall allow the Applicants herein to make additional submissions, if any, and also grant sufficient opportunities for personal hearing.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

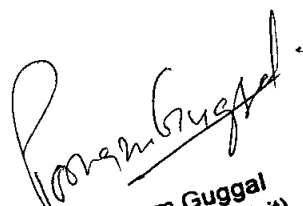
M/s Bharat Petroleum Corporation Ltd.
Irimpanam Installation,
Seaport-Airport Road,
Irimpanam, Cochin – 682 3-09.

G.O.I. Order No. 81 /23-CX dated 25-04-2023

Copy to: -

1. The Pr. Commissioner of CGST & Central Excise, Kochi, C.R. Building, I.S. Press Road, Cochin – 682 018.
2. The Commissioner (Appeals), Central Taxes & Central Excise, C.R. Building, I.S. Press Road, Cochin-682018.
3. Ms. Ankita Vashistha, Advocate, Economic Laws Practice, 9th Floor, Mafatlal Centre, Vidhan Bhawn Marg, Nariman Point, Mumbai-400 021.
4. PPS to AS (RA)
5. Guard File.
6. Spare Copy
7. Notice Board

ATTESTED



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