SPEED POST

F. No. 198/04-06/SZ/2020-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 23/08/24

Order No. 17-19/2024-CX dated 23-08-2024 of the Government of India, passed by Ms. Shubhagata Kumar , Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject	:	Revision Applications, filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal Nos. HYD-EXCUS-RRC-020-022-19-20 (APP-I) dated 20.03.2020, passed by the Commissioner of Customs & Central Excise (Appeals-I), Hyderabad.
Applicants	:	The Commissioner of CGST, Rangareddy.
Respondent	:	M/s Hindustan Petroleum Corporation Ltd. Hyderabad.

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ORDER

Three Revision Applications No. 198/04/SZ/2020-RA, 198/05/SZ/2020-RA &198/06/SZ/2020-RA, all dated 22.07.2020 has been filed by The Commissioner of CGST, Rangareddy (hereinafter referred to as the Applicant), against Order-in-Appeal Nos. HYD-EXCUS-RRC-020-022-19-20 (APP-I) dated 20.03.2020, passed by the Commissioner of Customs & Central Excise (Appeals-I), Hyderabad. The Commissioner (Appeals) has, vide the impugned Orders-in-Appeal, dismissed the departmental appeals filed against the Order-in-Original Nos. 04/Ref/2019-20 dated 23.05.2019, 05/Ref/2019-20 dated 23.05.2019 and 13/Ref/2019-20 dated 24.06.2019, all passed by the Assistant Commissioner of Central Tax, Shamshabad Division. The Assistant Commissioner of Central Tax had sanctioned three refund claims filed by M/s Hindustan Petroleum Corporation Limited, AFS Aviation Fuel farm Facility, Rajiv Gandhi International airport, Shamshabad, Hyderabad (hereinafter referred to as "Respondent").

2. Briefly stated, the Respondents herein had an export warehouse under the jurisdiction of Shamshabad CGST Division. The Respondents filed three rebate claims under rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004 dated 06.09.2004 seeking rebate of Central Excise duty paid on Aviation Turbine fuel (ATF) supplied to foreign bound aircrafts during the months of December, 2017, March 2018 to May 2018 and August 2018 to September 2018. Vide the above mentioned Os-I-O, the rebate sanctioning authority sanctioned the rebate claims. The Applicant department filed appeals against the above mentioned three Os-I-O with the Commissioner(Appeals). The Commissioner(Appeals) vide the impugned Os-I-A dismissed all the three appeals.

39(i). The Revision Application has been filed by the Applicants, mainly, on the grounds that the Respondent herein did not follow the procedure prescribed in Notification, hence the duty paid character of the goods could not be established; that the ARE-1s in the instant case were not raised at the refinery; that the Rebate sanctioning authority did not satisfy himself about the duty paid nature of the goods;

that the intention to export at the time of clearance was missing; that the department's objection in terms of Para 3(a) and 3(b) of Notification No. 19/2004-CE are not discussed in the impugned OIA; that the Respondent's case was a case on par with a merchant exporter clearing goods from open market under claim of rebate , which necessitated supervision and sealing of export goods by Central Excise officers; that the respondents did not file ARE-1s with the jurisdictional Range office but filed with the Customs authorities as if it was a self-sealing category export; that the jurisdictional Range office report is factually incorrect and hence the O-I-O and O-I-A should not have relied on such report; that co-relation of the duty payment vis-à-vis the relevant documents was not addressed; that in terms of Para 3 of the Notification No. 19/2004 dated 06.09.2004 and para 8.2 of CBEC's manual of supplementary instructions, an exporter needs to declare his intention to export the goods which is missing in this case.

3(ii). The respondent company vide its letter dated 02.02.2024 submitted its counter reply to the revision application. In the submission the respondent claimed that they had fulfilled the conditions and procedure of Notification No. 19/2004 dated 06.09.2004; that in terms of Para 2(a) of the Notification (supra) ARE-1s can also be prepared from the warehouse; that ARE-1s have also been filed with the jurisdictional Range office which is evident from the recording at para 3 of the orders in original that "signed triplicate copies of the ARE-1s have been received from the Range officer, Shamshabad Range; that they are not merchant exporter as alleged by the Applicant department but a registered ware house of the manufacturer i.e. HPCL refinery at Vishakhapatnam; that they had provided the requisite documents such as copy of challans on which the Visakhapatnam refinery paid Excise duty, stock transfer invoices for duty paid ATF to HPCL Aviation farm facility , Rajiv Gandhi International airport raised by HPCL Ghatkesar Terminal Telangana and HPCL Vijaywada Terminal, Andhra Pradesh for co-relation of the duty paid goods cleared from the refinery and subsequently exported by the Respondent; that Duty paid nature of the goods cleared from the refinery was confirmed by the Range officer having jurisdiction over the Visakh refinery vide e-mail dated 05.03.2019.

4 Personal hearing in the matter was held on 17.01.2024. Sh. S.Praveen Kumar, Superintendent , GST Division, Shamshabad appeared for the Applicant department. He reiterated the grounds made in the Revision Application. The Respondent had sought an adjournment, which was given. The personal hearing was adjourned for 12.02.2024. On 12.02.2024. Ms. Shantini Manohar, DGM(Finance) and Ms. Nimmy Thomas, Sr. Manager(Finance) appeared for the Respondent. The respondent submitted that they met all the conditions of Notification No. 19/2004 dated 06.09.2004;that they submitted all the required documents such as stock registers ,shipping bills delivery receipts, CENVAT receipts, ARE-1s etc. which were duly verified by the jurisdictional range officers; that their claims were duly pre-audited and cleared by the officers concerned, the HPCL produces its own ATF and is not at par with merchant exporters who buy out those products and that they have always sourced their ATF from their own refineries. Hence, their claims are in order and the OIA should be upheld and the RA may be dismissed. The submissions made by the Applicant department earlier have been taken into consideration.

5. At the outset, it has been observed that the revision applications have been filed with a delay of 10 days from the stipulated period. In this respect, the Applicant has filed a condonation of delay application towards this delay stating the reason as the Corona pandemic. The Government condones the delay in light of Hon'ble Supreme Court's order dated 10.01.2022, wherein, period from 15.03.2020 till 28.02.2022 was ordered to be excluded in computing the period of limitation.

6.1. It has been alleged in the revision application that the Rebate Sanctioning Authority did not satisfy himself about the duty paid nature of the goods. On this contention of the Applicant, the Government finds from the record placed before it, that the Rebate Sanctioning Authority (RSA) in all the three Os-I-O at para 7 to 12 has elaborately discussed the duty paid nature of the impugned ATF exported by considering and discussing all the relevant documents, which are elaborated as below :

(i) R.A. No 198/04/SZ/2020 :- The RSA has in O-I-O 04/Ref/2019-20 dated 23.05.2019 has recorded that Aviation Turbine Fuel (ATF) was manufactured at Hindustan Petroleum Corporation Limited, Visakh Refinery, Visakhapatanam. They had sold it to M/s HPCL Ghatkesar Terminal, Telangana and M/s HPCL Vijaywada Terminal, Andhra Pradesh vide invoice nos. 17001231 dated 20.09.2017 and 17000166 dated 20.10.2017 respectively on which Central Excise duty of Rs.1,29,20,867/- and Rs.25,98,042/- was paid vide Challan Nos.00060 dated 06.10.2017 and 00156 dated 06.11.2017 respectively, as confirmed by the Range officer, Malkapuram CGST Range, Visakhapatnam vide e-mail dated 05.03.2019. Further, it has also been recorded that such ATF received by both the terminals was transferred to the Respondent on transfer invoices passing on the burden of proportionate Central Excise duty. Further, it has also been recorded that the proportionate duty was worked out for each ARE-1 as per the duty paid at the refinery. The Rebate Sanctioning Authority further summed up and recorded that Central Excise duty in respect of the impugned goods for which rebate has been claimed, has been paid.

(ii) R.A. No 198/05/SZ/2020 :- The RSA in O-I-O 05/Ref/2019-20 dated 23.05.2019 has recorded that Aviation Turbine Fuel (ATF) was manufactured at Hindustan Petroleum Corporation Limited, Visakh Refinery, Visakhapatanam. They had sold it to M/s HPCL Ghatkesar Terminal, Telangana and M/s HPCL Vijaywada Terminal, Andhra Pradesh vide invoice nos. 17000184 dated 07.12.2017 and 17000198 dated 20.01.2018 respectively on which Central Excise duty of Rs.1,77,99,782/- and Rs.51,33,871/- was paid. Further, it has also been recorded that such ATF received by the terminal was transferred to the Respondent on transfer invoices passing on the burden of proportionate Central Excise duty. Further, it has also been recorded that on scrutiny of the documents in respect of ARE-1s of March-May,2018 , the proportionate duty worked out for these ARE-1s is as per the duty payment made by the refinery i.e. Rs.30,45,079/- which is equal to the total of specific amount sought for by the exporter . It is also record that the fact of export is not in doubt. Thereafter the RSA recorded that the material was cleared under various ARE-1s and the quantity tallies with the Shipping bills and export has

been verified by Customs Officer at RGIA, Hyderabad. Finally the RSA also recorded that the claim has been pre-audited and cleared by Hqrs. Audit Section.

(iii) R.A. No 198/06/SZ/2020 :- The RSA has in O-I-O 13/Ref/2019-20 dated 24.06.2019 recorded that Aviation Turbine Fuel (ATF) was manufactured at Hindustan Petroleum Corporation Limited, Visakh Refinery, Visakhapatanam. They had sold it to M/s HPCL Ghatkesar Terminal, Telangana vide invoice nos. 18000331 dated 10.07.2018 and 18000418 dated 13.08.2018 respectively on which Central Excise duty of Rs.1,31,19,372/- and Rs.1,77,03,776/- was paid vide Challan Nos.00352 dated 06.08.2018 and 00068 dated 10.07.2018 respectively. Further, it has also been recorded that such ATF received by the terminal was transferred to the Respondent on transfer invoices passing on the burden of proportionate Central Excise duty. Further, it has also been recorded that the proportionate duty was worked out for each ARE-1 as per the duty paid at the refinery. The Rebate Sanctioning Authority further summed up and recorded that Central Excise duty in respect of the impugned goods for which rebate has been claimed, has been paid.

6.2 Based on the above, the Government observes that, the Rebate sanctioning authority appears to have verified facts and satisfied himself regarding the duty paid character of the impugned goods exported which has been reflected in all the three rebate sanction orders for treating the exported goods as duty paid. Further the export of the impugned goods is also not in dispute and the fact of warehouse of M/S HPCL from where the ATF was supplied to aircrafts on foreign run is a registered warehouse is also not contested. Hence, the Government observes condition 2(a) of Notification No. 19/2004 dated 06.09.2004 has been complied with. Hon'ble Bombay High Court in an identical issue in the case of M/s Indian Oil Corporation Vs U.O.I {2015(316) E.L.T. 618 (Bom.)} held that:

> *"14. Upon perusal of this condition, we find much substance in the argument of Mr. Patil that if excisable goods are exported after payment of duty directly from a factory or warehouse, then nothing more is required to be considered and verified. That in this case, records have been verified and which demonstrate that*

the export of duty paid products is from a recognized warehouse namely AFS at Delhi. Therefore, the Appellate as well as the Revisional Authority could not have held that there is no compliance with the condition. The Revisional Authority has further observed that the Circular issued by the Central Board of Excise and Customs dated 30th January, 1997 has held that this condition can be relaxed if the goods exported are identifiable and co-relatable with the goods cleared from the factory of manufacturer."

*"**15.** We do not find any basis for placing reliance upon this Circular dated 30th January, 1997 of the Central Board, as the Notification is a subsequent document. That does not indicate as to how the refund can be denied merely because the goods, which are duty paid, have been exported from a warehouse. In such circumstances, there is no basis for the finding and conclusion that the condition in the Notification has not been fulfilled or satisfied by the Petitioner. All documents have been furnished and submitted and we do not find as to how a general and vague finding about non-submission of documents can be recorded by the Authorities. In fact, findings in paras 7 & 8 of the order of the Revisional Authority are inconsistent and contradictory. If the argument of the Petitioner is that the co-relation has been established and which has been considered in para 8, then, there was no necessity of rejecting it in the teeth of earlier clear observations and findings that perusal of records shows that fuel was supplied to aircrafts on foreign run by transferring the duty paid product to AFS, Mumbai-Delhi. If that is registered as a warehouse of excisable goods, then, there is absolutely no necessity of looking into any other compliance.....*

(Emphasis supplied)

6.3 In light of the factum of export not in dispute and in absence of any cognizable documentary evidence indicating that the exported ATF didn't bear the element of duty, the Government observes that the ratio of judgment of Hon'ble High Court referred to in Para 6.2 above is squarely applicable in the instant case. Therefore, Applicant's contention is unsustainable and is accordingly rejected.

7.1 The Applicant has contended that ARE-1s in the instant case were not raised at the refinery. The ARE1s were also not filed with the Jurisdictional Range Office (JRO) but with the Customs authorities; that their case was on par with merchant exporter clearing goods from open market under claim for rebate, which necessitated supervision and sealing of export goods by Central Excise officers and therefore, the Respondent did not follow the procedure in terms of Para 3(a) of Notification No. 19/2004 dated 06.09.2004. It has also been contended that non-following of certain procedures *"could have vitiated the claims"*. Further it has also been averred in the application that the JRO's report which had been relied upon in the O-I-O and O-I-A is factually incorrect. On the former contention, the Government observes that it would be appropriate to discuss the relevant para of Notification No. 19/2004 dated 06.09.2004.

Para 3(a)(xi) of the said Notification provides that *"Where the exporter desires self-sealing and self-certification for removal of goods from the factory or warehouse or any approved premises, the owner, the working partner, the Managing Director or the Company Secretary, of the manufacturing unit of the goods or the owner of warehouse or a person duly authorized by such owner, working partner or the Board of Directors of such Company, as the case may be, shall certify on all the copies of the application that the goods have been sealed in his presence, and shall send the original and duplicate copies of the application along with the goods at the place of export, and shall send the triplicate and quadruplicate copies of the application to the Superintendent or Inspector of Central Excise having jurisdiction over the factory or warehouse within twenty four hours of removal of the goods"*. Thus, it is clear from the wordings of the above mentioned provision that ARE-1s can be raised at a warehouse as well and thus it is the triplicate and quadruplicate copies

which are to be sent to the jurisdictional range officer, whereas, the original and duplicate copies are to be sent to the Customs Authorities. Nowhere does the Notification No. 19/2004 dated 06.09.2004, specifically stipulate that the original application is to be filed with the jurisdictional Range Officer. The Applicant department has stated that M/s HPCL's case is at par with a merchant exporter, who procures goods from the open market and exports them. Whereas, in the instant case the Government observes that the Respondents did not procure duty paid goods from the open market but sourced them from their own oil depots. It is further observed that not a shred of evidence has been produced by the Applicant department to prove that non duty-paid goods were exported. Even if it is hypothetically presumed that there was indeed a procedural lapse on part of the Respondent, there is a plethora of judgments which state that if the factum of export of duty paid goods is not in dispute, then such procedural lapses can be condoned. Further, the Applicant department has stated the JRO's report to be wrong, but has not given any basis for the same and has not produced any facts to establish that in fact M/s HPCL exported non-duty paid ATF. The department's contention that not following the procedure exactly "could have vitiated the claim" is in the nature of a presumption or apprehension rather an evidence-based fact.

7.2 Lastly, the Applicant department has contended that in terms of Para 3 of the Notification No. 19/2004 dated 06.09.2004 and para 8.2 of CBEC's manual of supplementary instructions, an exporter needs to declare his intention to export the goods which is missing in this case. On the said contention, the Government observes that this issue has been appropriately dealt with by the Appellate Authority in the impugned OIA at Para 9 wherein, the Appellate authority has held that Notification No. 19/2004 dated 06.09.2004 which provides for grant of rebate of duty paid on the goods exported does not stipulate any such condition that the goods should be exported only from the factory of manufacture. As per the said Notification, goods can be directly exported either from a factory of manufacture or a warehouse. In light of the Hon'ble High Court's order in the case of M/s Indian Oil Corporation Vs U.O.I {2015(316) E.L.T. 618 (Bom.)},the Government does not find any ground to interfere with the Order in Appeal on this issue. Further, ARE-1 is the

statutory application form for the export of goods in terms of Notification No. 19/2004 dated 06.09.2004 which the Government observes, has been filed in the instant case.

8. In view of the above, the Government does not find any infirmity in the order of the Commissioner (Appeals) and finds it sustainable. It is, accordingly, upheld.

9. All the three revision applications are, therefore, rejected.

23/8/24

(Shubhagata Kumar)
Additional Secretary to the Government of India

The Commissioner of CGST & CentralExcise, Rangareddy,
Posnett Bhawan, Tilak Road, Ramkote,
Hyderabad-500001.

G.O.I. Order No. 17-19 /24-CX dated 23-08-2024

Copy to: -

1. M/s Hindustan Petroleum Corporation Ltd., AFS Aviation fuel Farm Facility, Rajiv Gandhi International Airport, Shamshabad, Hyderabad.
2. The Commissioner of CGST (Appeals-I), GST Bhavan, Lal Bahadur Stadium Road, Basheerbagh, Hyderabad-500004.
3. PPS to AS (RA)
4. Guard File
5. Spare Copy.
6. Notice Board.

23/8/24

ATTESTED (शैलेन्द्र कुमार मीना)
(Shailendra Kumar Meena)
अनुभाग अधिकारी / Section Officer
वित्त मन्त्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
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