

SPEED POST



F. No. 198/07-13/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. 20-26/2024-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-APP-013-019-19-20 (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 Bharat Petroleum Corporation Ltd. Hyderabad.

ORDER

Seven Revision Applications No. 198/07/SZ/2020-RA, 198/08/SZ/2020-RA , 198/09/SZ/2020-RA, 198/10/SZ/2020-RA, 198/11/SZ/2020-RA, 198/12/SZ/2020-RA & 198/13/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-APP-013-019-19-20 (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. 02/Ref/2019-20 dated 13.05.2019, 03/Ref/2019-20 dated 15.05.2019, 06/Ref/2019-20 dated 23.05.2019, 07/Ref/2019-20 dated 23.05.2019, 09/Ref/2019-20 dated 11.06.2019, 10/Ref/2019-20 dated 11.06.2019 and 11/Ref/2019-20 dated 20.06.2019, all passed by the Assistant Commissioner of Central Tax, Shamshabad Division. The Assistant Commissioner of Central Tax had sanctioned seven refund claims filed by M/s Bharat 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 seven 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, January 2018, February 2018, March 2018, April 2018, July 2018 and February 2019. Vide the above mentioned Os-I-O, the RSA sanctioned the applicable rebate claims. The Applicant department filed appeals against the above mentioned seven Os-I-O with the Commissioner(Appeals). The Commissioner(Appeals) vide the impugned Os-I-A dismissed all the seven appeals.

3.1 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 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 (hereinafter referred to as "RSA") 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 the Notification No. 19/2004 dated 06.09.2004 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.

3.2 The respondent company vide its e-mail dated 30.01.2024 submitted its counter reply to the revision application. In that submission the respondent claimed that ARE-1s in their case have been issued correctly and co-relation between duty paid goods and exported goods exists; that they had submitted documents to establish the co-relation viz. Central Excise invoices issued by M/s Bharat Oman refinery Ltd.(manufacturing refinery and hereinafter referred to as "BORL") to their Cherlapally depot, including sales ledger of BORL which includes the said Excise invoices, the monthly challans vide which duty payment was made by BORL, stock transfer invoices issued by Cherlapally depot to Hyderabad AFS, ARE-1s in triplicate, shipping bills and Airport delivery receipts and moreover, they also submitted one-to-one correlation statement between ATF procured from refinery and exported to foreign run aircrafts. It is only after the RSA verified these documents, sanctioned the rebate claims; that intention of export at factory gate by an exporter is not a pre-condition for claiming rebate as alleged by the department in the revision application; that there is a distinction between condition & limitations and procedure

specified in Notification No.19/2004-CE and that condition & limitations are mandatory and procedure specified is directory.

4 Personal hearing in the matter was held on 17.01.2024. Sh. Jitender Kumar, DGM, BPCL(Mumbai) and Ms. Jahnvi Thacker, Manager(Taxation) appeared for the Respondent. Ms Thacker submitted that their Hyderabad AFS functions as an Export warehouse and that they have been given permission for mixed storage (duty paid and non-duty paid)in this warehouse. Whenever, they face a shortage of product , they use duty paid ATF for foreign bound aircraft and later claim rebate for the same. She further stated that all their previous claims of identical nature have been granted and sanctioned without any demur. She stated that conditions under Notification No. 19 para (2) are complied with and accepted as such by the Applicants. She stated further that all relevant supporting documents have been submitted viz. stock register, invoices, ARE-1s , shipping Bills etc. and the Jurisdictional Range Officer and the Assistant Commissioner who was the RSA had satisfied themselves before sanctioning the refund. The export is not in dispute , conditions have been met and there are several identical and similar cases such as that of M/s IOCL, Sanket Industries, Vinergy Ltd. etc. have been decided and are in their favour. No one appeared for the Applicant department nor any request for adjournment was received, however, to meet the ends of natural justice, one more opportunity was given to the Applicant department on 12.02.2024. Personal hearing on 12.02.2024 was again attended by Sh. Jitender Kumar, DGM, BPCL(Mumbai) and Ms. Jahnvi Thacker, Manager(Taxation) for the Respondent, who reiterated their earlier submissions. Again, no one appeared for the Applicant department nor was any request for adjournment received. Hence, it is presumed that the department has nothing to add in the matter.

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 an application for condonation of delay on the grounds that the delay occurred due to the Corona pandemic and related circumstances. 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 RSA 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 Commissioner (Appeals) has recorded in the impugned OIA that the RSA in all the seven Os-I-O 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 198/07/SZ/2020 :- The RSA has in O-I-O 02/Ref/2019-20 dated 13.05.2019 has recorded that Aviation Turbine Fuel (ATF) was manufactured at M/s Bharat Oman Refineries Ltd. Bina (M.P.). They had sold it to M/s BPCL, Cherlapally, Hyderabad(depot of M/s BPCL) vide invoice nos. 0217019325 dated 03.12.2017 and 0217020121 dated 19.12.2017 respectively on which Central Excise duty of Rs.1,04,54,518/- and Rs.73,23,041/- was charged. Sales ledger register of the manufacturer was scrutinized by the Central Excise authorities, wherein, it was found that Central Excise liability of the manufacturer for the month of Dec,2017 was Rs. 7,46,44,77,631/- which included the duty involved in the above two mentioned invoices as well. The total monthly Central Excise liability was paid vide 4 challans, all dated 06.01.2018. The duty payment Challans were produced before the RSA for establishing the duty paid character of the ATF procured . Further, it has also been recorded that such ATF received at BPCL depot at Cherlapally, Hyderabad 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 Government further observes that the RSA in the Rebate Sanction order at Para 11 has specifically tabulated the requisite details such as fuel delivery voucher number with date, to which airline the ATF was supplied, flight ID, ATF (in Litres) supplied, dated ARE-1s, dated shipping bill nos., Central Excise invoice under which the supplied ATF was procured, Central Excise duty paid by the manufacturer per litre and the proportionate duty involved in the ATF supplied. Finally the RSA

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 198/08/SZ/2020 :- The RSA has in O-I-O 03/Ref/2019-20 dated 15.05.2019 has recorded that Aviation Turbine Fuel (ATF) was manufactured at M/s Bharat Oman Refineries Ltd. Bina (M.P.). They had sold it to M/s BPCL, Cherlapally, Hyderabad(depot of M/s BPCL) vide invoice nos. 0217020532 dated 27.12.2017 , 0217020533 dated 27.12.2017 and 0217021456 dated 16.01.2018 respectively on which Central Excise duty of Rs.33,82,277/- , Rs. 64,84,219/- and Rs.96,99,800/- respectively was charged. Sales ledger register of the manufacturer was scrutinized by the Central Excise authorities, wherein, it was found that Central Excise liability of the manufacturer for the month of Dec,2017 was Rs. 7,46,44,77,631/- and for the month of Jan,2018 was Rs.9,28,98,53,671/- which included the duty involved in the above three mentioned invoices as well. The total Central Excise liability for the month of Jan,2018 was paid vide 6 challans all dated 06.02.2018. The duty payment challans were produced before the RSA for establishing the duty paid character of the ATF procured. Further, it has also been recorded that such ATF received at BPCL depot at Cherlapally, Hyderabad 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 Government further observes that the RSA in the Rebate Sanction order at Para 11 has specifically tabulated the requisite details such as fuel delivery voucher number with date, to which airline the ATF was supplied, flight ID, ATF (in Litres) supplied, dated ARE-1s, dated shipping bill nos., Central Excise invoice under which the supplied ATF was procured, Central Excise duty paid by the manufacturer per litre and the proportionate duty involved in the ATF supplied. Further, it has also been recorded in the order of RSA that the Applicant claimed an amount of Rs.12,07,941/- , however, during the scrutiny of the relevant documents , the claim worked out to Rs. 12,01,545/-. Finally the RSA summed up and recorded that Central Excise duty in respect of the impugned goods for which rebate amounting to Rs. 12, 01,545/- has been claimed, has been paid. Excess claim of Rs. 6,396/- was rejected.

(iii) R.A. No 198/09/SZ/2020 :- The RSA has in O-I-O 06/Ref/2019-20 dated 23.05.2019 has recorded that Aviation Turbine Fuel (ATF) was manufactured at M/s Bharat Oman Refineries Ltd. Bina (M.P.). They had sold it to M/s BPCL, Cherlapally, Hyderabad(depot of M/s BPCL) vide invoice No. 0217022763 dated 12.02.2018 on which Central Excise duty of Rs.1,04,48,437/- was charged. Sales ledger register of the manufacturer was scrutinized by the Central Excise authorities, wherein, it was found that Central Excise liability of the manufacturer for the month of Feb,2018 was Rs.2,91,77,93,925/- which included the duty involved in the above mentioned invoice as well. The total Central Excise liability for the month of Feb, 2018 was paid vide various challans. The duty payment challans were produced before the RSA for establishing the duty paid character of the ATF procured. Further, it has also been recorded that such ATF received at BPCL depot at Cherlapally, Hyderabad 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 Government further observes that the RSA in the Rebate Sanction order at Para 10 has specifically tabulated the requisite details such as fuel delivery voucher number with date, to which airline the ATF was supplied, flight ID, ATF (in Litres) supplied, dated ARE-1s, dated shipping bill nos., Central Excise invoice under which the supplied ATF was procured, Central Excise duty paid by the manufacturer per litre and the proportionate duty involved in the ATF supplied. Further, it has also been recorded in the order of RSA that the Applicant claimed an amount of Rs.8,57,847/- , however, during the scrutiny of the relevant documents , the claim worked out to Rs. 8,56,921/-. Finally the RSA summed up and recorded that Central Excise duty in respect of the impugned goods for which rebate amounting to Rs. 8,56,921/- has been claimed, has been paid. Excess claim of Rs. 926/- was rejected.

(iv) R.A. No 198/10/SZ/2020 :- The RSA has in O-I-O 07/Ref/2019-20 dated 23.05.2019 has recorded that Aviation Turbine Fuel (ATF) was manufactured at M/s Bharat Oman Refineries Ltd. Bina (M.P.). They had sold it to M/s BPCL, Cherlapally, Hyderabad (depot of M/s BPCL) vide invoice nos. 0217022763 dated 12.02.2018, 0217023221 dated 21.02.2018, 0217023271 dated 22.02.2018 and 0217023682

dated 28.02.2018 respectively on which Central Excise duty of Rs.1,04,48,437/-, Rs.73,41,908/-, Rs.97,94,831/- and Rs.94,41,935/- respectively was charged. Sales ledger register of the manufacturer was scrutinized by the Central Excise authorities, wherein, it was found that Central Excise liability of the manufacturer for the month of Feb,2018 was Rs.2,91,77,93,925/- which included the duty involved in the above mentioned invoices too. The total Central Excise liability for the month of Feb, 2018 was paid vide various challans. The duty payment challans were produced before the RSA for establishing the duty paid character of the ATF procured. Further, it has also been recorded that such ATF received at BPCL depot at Cherlapally, Hyderabad 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 Government further observes that the RSA in the Rebate Sanction order at Para 10 has specifically tabulated the requisite details such as fuel delivery voucher number with date, to which airline the ATF was supplied, flight ID, ATF (in Litres)supplied, dated ARE-1s, dated shipping bill nos., Central Excise invoice under which the supplied ATF was procured, Central Excise duty paid by the manufacturer per litre and the proportionate duty involved in the ATF supplied. Further, it has also been recorded in the order of RSA that the Applicant claimed an amount of Rs.23,79,797/- , however, during the scrutiny of the relevant documents , the claim worked out to Rs. 23,79,697/-. Finally the RSA summed up and recorded that Central Excise duty in respect of the impugned goods for which rebate amounting to Rs. 23,79,697/- has been claimed, has been paid. Excess claim of Rs. 100/- was rejected.

(v) R.A. No 198/11/SZ/2020 :- The RSA has in O-I-O 09/Ref/2019-20 dated 11.06.2019 has recorded that Aviation Turbine Fuel (ATF) was manufactured at M/s Bharat Oman Refineries Ltd. Bina (M.P.). They had sold it to M/s BPCL, Cherlapally, Hyderabad (depot of M/s BPCL) vide invoice nos. 0217025080 dated 27.03.2018, 0218000552 dated 11.04.2018 and 0218000795 dated 16.04.2018 respectively on which Central Excise duty of Rs.1,03,60,292/-, Rs.97,71,837/- and Rs.58,02,963/- respectively was charged. Sales ledger register of the manufacturer was scrutinized by the Central Excise authorities, wherein, it was found that Central Excise liability of

the manufacturer for the month of Mar,2018 was Rs.7,56,28,84,120/- and for the month of Apr,2018 was Rs. 6,32,73,40,698/- which included the duty involved in the above mentioned invoices too. The total Central Excise liabilities for the months of Mar, 2018 and Apr,2018 were paid vide various challans. The duty payment challans were produced before the RSA for establishing the duty paid character of the ATF procured. Further, it has also been recorded that such ATF received at BPCL depot at Cherlapally, Hyderabad 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 Government further observes that the RSA in the Rebate Sanction order at Para 10 has specifically tabulated the requisite details such as fuel delivery voucher number with date, to which airline the ATF was supplied, flight ID, ATF (in Litres) supplied, dated ARE-1s, dated shipping bill nos., Central Excise invoice under which the supplied ATF was procured, Central Excise duty paid by the manufacturer per litre and the proportionate duty involved in the ATF supplied. Further, it has also been recorded in the order of RSA that the Applicant claimed an amount of Rs.7,73,015/- , however, during the scrutiny of the relevant documents , the claim worked out to Rs. 7,72,483/-. Finally the RSA summed up and recorded that Central Excise duty in respect of the impugned goods for which rebate amounting to Rs. 7,72,483/- has been claimed, has been paid. Excess claim of Rs. 532/- was rejected.

(vi) R.A. No 198/12/SZ/2020 :- The RSA has in O-I-O 10/Ref/2019-20 dated 11.06.2019 has recorded that Aviation Turbine Fuel (ATF) was manufactured at M/s Bharat Oman Refineries Ltd. Bina (M.P.). They had sold it to M/s BPCL, Cherlapally, Hyderabad (depot of M/s BPCL) vide invoice nos. 0218004107 dated 16.06.2018 and 0218004397 dated 21.06.2018 respectively on which Central Excise duty of Rs.1,14,73,194/- and Rs.1,17,80,316/- respectively was charged. Sales ledger register of the manufacturer was scrutinized by the Central Excise authorities, wherein, it was found that Central Excise liability of the manufacturer for the month of Jun,2018 was Rs.3,26,70,75,870/- which included the duty involved in the above mentioned invoices too. The total Central Excise liability for the month of Jun, 2018

was paid vide two challans ,both dated 06.07.2018. The duty payment challans were produced before the RSA for establishing the duty paid character of the ATF procured. Further, it has also been recorded that such ATF received at BPCL depot at Cherlapally, Hyderabad 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 Government further observes that the RSA in the Rebate Sanction order at Para 10 has specifically tabulated the requisite details such as fuel delivery voucher number with date, to which airline the ATF was supplied, flight ID, ATF (in Litres) supplied, dated ARE-1s, dated shipping bill nos., Central Excise invoice under which the supplied ATF was procured, Central Excise duty paid by the manufacturer per litre and the proportionate duty involved in the ATF supplied. Finally the RSA summed up and recorded that Central Excise duty in respect of the impugned goods for which rebate amounting to Rs. 7,09,439/- has been claimed, was paid.

(vii) R.A. No 198/13/SZ/2020 :- The RSA has in O-I-O 11/Ref/2019-20 dated 20.06.2019 has recorded that Aviation Turbine Fuel (ATF) was manufactured at M/s Bharat Oman Refineries Ltd. Bina (M.P.). They had sold it to M/s BPCL, Cherlapally, Hyderabad (depot of M/s BPCL) vide invoice nos. 0218014490 dated 23.01.2019, 0218014682 dated 27.01.2019, 0218014925 dated 31.01.2019, 0218015049 dated 03.02.2019 and 0218015068 dated 05.02.2019 respectively on which Central Excise duty of Rs.68,48,681/-, Rs.1,15,55,156/-, Rs. 70,84,464/-, Rs. 1,07,91,609/- and Rs.67,93,030/- respectively was charged. Further, it has also been recorded that such ATF received at BPCL depot at Cherlapally, Hyderabad 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 Government further observes that the RSA in the Rebate Sanction order at Para 10 has specifically tabulated the requisite details such as fuel delivery voucher number with date, to which airline the ATF was supplied, flight ID, ATF (in Litres) supplied, dated ARE-1s, dated shipping bill nos., Central Excise invoice under which the supplied ATF

was procured, Central Excise duty paid by the manufacturer per litre and the proportionate duty involved in the ATF supplied.

6.2 Based on the above, the Government observes that, the RSA appears to have verified the facts and satisfied himself regarding the duty paid character of the impugned goods exported which has been reflected in all the seven 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 that the warehouse of M/S HPCL from where the ATF was supplied to aircrafts on foreign run is a registered warehouse under Rule 9 of the Central Excise Rules, 2002 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 did not 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 cannot be sustained.

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. 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.

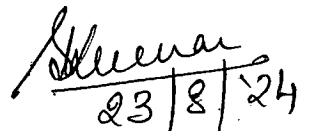
Para 3(a)(xi) of the said Notification provides that "*Where the exporter desires self-sealing and self-certification for removal of goods from the factory or warehouse or any approved premises, the owner, the working partner, the Managing Director or the Company Secretary, of the manufacturing unit 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 BPCL'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 BPCL exported non-duty paid ATF.

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 this 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 impugned order of the Commissioner (Appeals) and finds it sustainable. It is, accordingly, upheld.

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


23/8/24

(Shubhagata Kumar)

Additional Secretary to the Government of India

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

G.O.I. Order No. 20-26/24-CX dated 23-08-2024

Copy to: -

1. M/s Bharat 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.

Shailendra
23/8/24
ATTESTED

(शैलेन्द्र कुमार मीना)
(Shailendra Kumar Meena)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

