

SPEED POST



F.No. 195/538/11-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
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NEW DELHI-110 066

Date of Issue.....11.8.13

ORDER NO. 1072/13-Cx DATED 30.07.2013 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, JOINT 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. Commr(A)/84/VDR-I/2011 dated 28.2.11 passed by the Commissioner of Central Excise (Appeals), Vadodara-I

Applicant : M/s Indian Oil Corporation Ltd., Vadodara

Respondent : The Commissioner of Central Excise, Vadodara

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## ORDER

This Revision application is filed by M/s Indian Oil Corporation Ltd., Gujrat Refinery, Kayali, Jawahar Nagar, Vadodara against the order-in-appeal No.Commr(A)/84/VDR-I/2011 dated 28.2.11 passed by the Commissioner of Central Excise (Appeals), Vadodara-I with respect to order-in-original passed by the Deputy Commissioner of Central Excise & Customs, Division-IV, Vadodara-I.

2. Brief facts of the case are that the applicants are engaged in the manufacture of petroleum products falling under Chapter 27 of the schedule to the Central Excise Tariff Act, 1985. They filed a refund claim of Rs.3,93,801/- before the jurisdictional Deputy Commissioner on 11.02.05 on the ground they supplied ATF to its own depot located at Khapri, Maharashtra on payment of duty. Subsequently ATF was supplied from Khapri depot to AFS, Sonegaon Airport, Nagpur and from AFS, Nagpur, they had supplied 220.82 KL of ATF to international airlines for the period 29.12.2004 to 1.1.2005 on which excise duty involved was Rs.3,93,801/-. Since supplies of ATF to International airlines is to be treated as exports and without payment of duty, M/s IOCL filed the refund claim for Rs.3,93,801/-. It was noticed during the scrutiny of the refund claim that the applicants have not submitted the original duty paying invoices issued by them to Khapri Depot. Accordingly a show cause notice was issued to them. Subsequently, the refund claim was rejected by the Deputy Commissioner, Central Excise & Customs, Division-IV, Vadodara-I vide Order-in-Original No.21/Ref./DC/Div.IV/BKG/2008-09 dated 20.9.2008 mainly on the grounds that the ground that applicant failed to remove the goods under cover of AREs-1 in terms of the Notification No. 19/2004-CE (NT) and also that they failed to submit proper duty paying document for clearance of ATF.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeal) who upheld the order-in-original.

4. Being aggrieved by the impugned orders-in-appeal, the applicant party has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:-

4.1 The only ground on which the Commissioner (Appeals) has rejected the refund claim is that the applicants have failed to produce the invoices issued by them to Khapri Depot to establish the duty payment, in absence of which it is difficult to ascertain the assessable value and the amount of refund. The applicants had submitted the invoices for the stock transfer of ATF from Khapri depot to Nagpur AFS. Out of the duty paid product received at Nagpur AFS, 220.82 KLS of ATF was supplied to foreign going aircrafts to Air India vide various Invoices copies of which were also submitted before the Commissioner (Appeals). Even if the invoices from Gujarat Refinery to Khapri were not submitted, the Statement showing co-relation of the product removed from Gujarat Refinery vis-a-vis supplies to foreign going aircrafts at Nagpur AFS duly certified by the Chartered Accountant was submitted before the Commissioner (Appeals). The details of duty paying documents at GR were also submitted.

4.2 The applicants further submit that the refund cannot be rejected when the Certificate issued by Chartered Accounts showing the duty paid nature of the goods.

4.3 The applicants further say that it is a well settled position of law not to deny the rebate of duty paid for procedural deficiencies as long as the goods have in fact been exported. The applicant has relied upon various case laws in support of their contention.

5. Personal hearing was scheduled in this case on 5.3.2013 and 27.6.2013. Nobody attended the hearing. Hence, Govt. proceeds to decide the case against on the basis of available records.

6. Government has carefully gone through the relevant case records, written/oral submission and perused the impugned order-in-original and order-in-appeal.

7. Government observes that the applicant i.e. M/s. IOCL, Kayali, Vadodara filed refund/rebate claim on the ground that they supplied the ATF on payment of duty to foreign going aircraft and the duty paid on said ATF is required to be refunded/rebated. Original authority rejected the refund/rebate claim mainly on the ground that applicant failed to remove the goods under cover of AREs-1 in terms of the Notification No. 19/2004-CE (NT) and also that they failed to submit proper duty paying document for clearance of ATF. The said Order-in-Original was upheld by Commissioner (Appeals). Now applicant has filed this revision application on the grounds stated above in para 4.

8. Government observe that in order to avail benefit of rebate under Rule 18 r/w Notification No. 19/2004-CE (NT) dtd. 06-09-2004 the applicant was required to comply with condition and procedure stipulated in the said Notification dtd. 06-09-2004. The original authority observed that the applicant failed to remove the goods by following ARE-I procedure under cover of ARE-1 as prescribed under Notification No. 19/2004-CE (NT) dtd. 06-09-2004. Since no ARE-I form was prepared/submitted for clearance of excisable goods for export.

9. In this regard, for proper understanding of issue, the relevant provisions of Notification and instructions regarding filing of rebate claim along with requisite documents are extracted below :-

9.1 Para 8.2, 8.3 and 8.4 of part I of Chapter 8 of CBEC Excise Manual of Supplementary Instructions stipulates as under:-

"8.2 It shall be essential for the exporter to indicate on the A.R.E. 1 at the time of removal of export goods the office and its complete address with which they intend to file claim of rebate.

8.3 The following documents shall be required for filing claim of rebate:

- (i) A request on the letterhead of the exporter containing claim of rebate, A.R.E. 1 numbers and dates, corresponding invoice numbers and dates amount of rebate on each A.R.E. 1 and its calculations,
- (ii) Original copy of the A.R.E.1,
- (iii) Invoice issued under rule 11,
- (iv) Self attested copy of shipping bill, and
- (v) Self attested copy of Bill of Lading.
- (vi) Disclaimer Certificate [ in case where claimant is other than exporter]

8.4 After satisfying himself that the goods cleared for export under the relevant A.R.E.1 applications mentioned in the claim were actually exported, as evident by the original and duplicate copies of A.R.E. 1 duty certified by Customs, and that the goods are of 'duty-paid' character as certified on the triplicate copy of A.R.E.1 received from the jurisdictional Superintendent of Central Excise (Range Office), the rebate sanctioning authority shall sanction the rebate, in part or full. In case of any reduction or rejection of the claim, an opportunity shall be provided to the exporter to explain the case and a reasoned order shall be issued."

9.2 Para 3 (a) and 3(b) of Notification No. 19/2004-CE/(NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002, envisage as under:-

" **3 (a) Procedures:-**

**(a) Sealing of Goods and examination at the place of dispatch and export:-**

(i) The manufacturer exporters registered under the Central Excise Rules, 2002 and merchant- exporters who procure and export the goods directly from the factory or warehouse can exercise the option of exporting the goods sealed at the place of dispatch by a Central Excise Officer or under self-sealing;

(ii) Where the exporter desires self-sealing and self-certification, the manufacturer of the export goods or owner of the warehouse shall take the responsibility of sealing and certification;

(iii) The merchant-exporters other than those procuring the goods directly from the factory or warehouses shall export the goods sealed at the place of dispatch by a Central Excise Officer;

(iv) For the sealing of goods intended for export, at the place of dispatch, the exporter shall present the goods along with four copies of application in the Form ARE-I specified in the Annexure to this notification to the Superintendent or Inspector of

*Central Excise having jurisdiction over the factory of production or manufacture or warehouse;*

*(v) The said Superintendent or Inspector of Central Excise shall verify the identity of goods mentioned in the application and the particulars of the duty paid or payable, and if found in order, shall seal each package or the container in the manner as may be specified by the Commissioner of Central Excise and endorse each copy of the application in token of having such examination done;*

*(vi) The said Superintendent or Inspector of Central Excise shall return the original and duplicate copies of application to the exporter;*

*(vii) The triplicate copy of application shall be -*

*(a) sent to the officer with whom rebate claim is to be riled, either by post or by handing over to the exporter in a tamper proof sealed cover after posting the particulars in official records, or*

*(b) sent to the Excise Rebate Audit Section at the place of export in case rebate is to be claimed by electronic declaration on Electronic Data Inter-change system of Customs;*

*(viii) The exporter may prepare quadruplicate copy of application for claiming any other export incentive. This copy shall be dealt in the same manner as the original copy of application:*

*(ix) Where goods are not exported directly from the factory of manufacture or warehouse, the triplicate copy of application shall be sent by the Superintendent having jurisdiction over the factory of manufacture or warehouse, who shall, after verification, forward the triplicate copy in the manner specified in sub-paragraph (vii);*

*(x) In case of export by parcel post after the goods intended for export have been scaled, the exporter shall affix to the duplicate application sufficient postage stamps to cover postal charges and shall present the documents, together with the package or packages to which it refers, to the postmaster at the office of booking;*

*(xi) 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 or 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;*

*(xii) In case of self-sealing, the said Superintendent or Inspector of Central Excise shall, after verifying the particulars of the duty paid or duty payable and endorsing the correctness or otherwise, of these particulars -*

*(a) send to the officer with whom rebate claim is to be filed, either by post or by handing over to the exporter in a tamper proof sealed cover after posting the particulars in official records. or*

(b) send to the Excise Rebate Audit Section at the place of export in case rebate is to be claimed by electronic declaration on Electronic Data Inter-change system of Customs;

(xiii) On arrival at the place of export, the goods shall be presented together with original, duplicate and quadruplicate (optional) copies of the application to the Commissioner of Customs or other duly appointed officer;

(xiv) The Commissioner of Customs or other duly appointed officer shall examine the consignments with the particulars as cited in the application and if he finds that the same are correct and exportable in accordance with the laws for the time being in force, shall allow export thereof and certify on the copies of the application that the goods have been duly exported citing the shipping bill number and date and other particulars of export:

Provided that if the Superintendent or Inspector of Central Excise sealed packages or container at the place of dispatch, the officer of customs shall inspect the packages or container with reference to declarations in the application to satisfy himself about the exportability thereof and if the seals are found intact, he shall allow export.

(xv) The officer of customs shall return the original and quadruplicate (optional copy for exporter) copies of application to the exporter and forward the duplicate copy of application either by post or by handing over to the exporter in a tamper proof sealed cover to the officer specified in the application, from whom the exporter wants to claim rebate:

Provided that where the exporter claims rebate by electronic declaration on the Electronic. Data Inter-change system of Customs, the duplicate shall be sent to the Excise Rebate Audit Section at the place of export.

(xvi) The exporter shall use the quadruplicate copy for the purposes of claiming any other export incentive.

### **3(b) Presentation of claim for rebate to Central Excise:-**

- (i) Claim of the rebate of duty paid on all excisable goods shall be lodged along with original copy of the application to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, the Maritime Commissioner;
- (ii) The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, Maritime Commissioner of Central Excise shall compare the duplicate copy of application received from the officer of customs with the original copy received from the exporter and with the triplicate copy received from the Central Excise Officer and if satisfied that the claim is in order, he shall sanction the rebate either in whole or in part."

9.3 The procedure stipulated above is not followed in this case. The excisable goods are required to be cleared for export on ARE-I form. Original

and duplicate copies contain the certification from customs authorities that said goods are exported vide relevant Shipping Bill. The triplicate copy of ARE-I contains the duty payment certification from range Superintendent. The said document accompanies the consignment and necessary for establishing that the goods cleared from factory on payment of duty are actually exported.

9.4 From above position, it becomes quite clear that ARE-1 application is the basic essential document for export of duty paid goods under rebate claim. The Customs certification on these copies of ARE-1 proves the export of goods but in the absence of duly certified copies of ARE-1, rebate sanctioning authority has no chance to compare these documents with triplicate copy of ARE-1 as stipulated under above discussed provisions of Notification No. 19/2004-CE/(NT) dated 06.09.2004 and therefore he can not satisfy himself of the correctness of the rebate claim. Hence, it cannot be established that excisable goods cleared from factory of manufacture on payment of duty has been exported.

9.5 In case of export of goods without payment of duty under bond in terms of Rule 19 of Central Excise Rule 2002, there is a provision under Chapter 7 of CBEC Excise Manual of Supplementary Instructions (the chapter which relate to procedure/instructions in respect of export under bond without payment of duty) for accepting proof of export on the basis of collateral documentary evidences if original and duplicate copies of ARE-1 are lost. But in case of exports on payment of duty under rebate claim in terms of Rule 18 of the Central Excise Rules, 2002, there is no such provision under relevant Chapter 8 of CBEC Excise Manual of Supplementary Instructions (the chapter which relates to procedure/instruction in respect of export under claim for rebate) for acceptance of collateral document evidence if original and duplicate ARE-1 is missing. In the Chapter 8 of CBEC Excise Manual of Supplementary Instructions, CBEC has not relaxed the condition of submission of original and duplicate ARE-1 alongwith rebate claim in any exigency. In case of rebate claim filing of ARE-I form as per



procedure laid down in Notification No. 19/04-CE (NT) is essential to establish the export of same duty paid goods which were cleared from factory of manufacture.

9.6 Applicant has not submitted the duty paying Central Excise Invoices issued under rule 11 of Central Excise Rules, 2002 by the Refinery to prove the duty paid nature of goods. This fact is admitted by applicant but they are claiming that invoices issued by their depot at Khapri can be accepted as duty paying document. This argument is not acceptable. Since the duty payment is mentioned on Central Excise Invoice issued under rule 11 of is required to be submitted along with the rebate claim. Applicant has failed to furnish the said invoices and therefore the duty paid character of said goods cannot be established.

10. In view of above position, Government notes that due to non compliance of ARE-1 procedure, non submission of original/duplicate copy of ARE-1 duly endorsed by customs and non submission of Central Excise Invoice issued by manufacturer the export of duty paid goods can not be established. The compliance of said fundamental requirement is must for sanctioning the rebate claim under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE/(NT) dated 06.09.2004. As such the rebate claim is not admissible in this case under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004.

11. In view of circumstances, Government do not find any infirmity in the orders of appellate authority and hence, upholds the same.

12. Revision Application is thus rejected being devoid of merit.

13. So, Ordered.



(D P Singh)

Joint Secretary (Revision Application)



(टी. आर. आर्य / T.R. ARYA)  
अधीक्षक, आर.ए./Superintendent RA  
वित्त मंत्रालय, (राजस्व विभाग)  
Ministry of Finance, (Deptt. of Re...  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi

M/s Indian Oil Corporation Ltd.,  
Gujarat Refinery  
P.O.Jawaharnagar  
Vadodara-391320

G.O.I. Order No. 1072 /2013 dated 30-7 - 2013

Copy to:-

1. The Commissioner of Central Excise, 1<sup>st</sup> Floor, Annexi, New Central Excise Building, Race Course, Vadodara-390007
2. The Commissioner (Appeal) Central Excise & Customs, 1<sup>st</sup> Floor, Annexi, New Central Excise Building, Race Course, Vadodara-390007
3. The Deputy Commissioner of Central Excise & Customs, Division-IV, Vadodara-I
4. ✓ PS to JS(Revision Application)
5. Guard File
6. Spare Copy.

ATTESTED



(T.R.Arya)

SUPINTENDENT (REVISION APPLICATION)