

REGISTERED
SPEED POST



F. No. 195/380/2012-RA-CX
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 6/4/16.....

ORDER NO. 55/2016-CX DATED 31.03.2016 OF THE GOVERNMENT OF INDIA,
PASSED BY SMT. RIMJHIM PRASAD, 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, 1944 against the Order-in-Appeal No.BC/331/M-II/2011-
12 dated 27.02.2012 passed by Commissioner of Central Excise,
(Appeals) Mumbai-III, Mumbai Zone-II

Applicant : M/s Hindustan Petroleum Corporation Ltd.

Respondent : Commissioner of Central Excise, Mumbai-II

ORDER

This Revision Application is filed by M/s Hindustan Petroleum Corporation Ltd, (hereinafter referred to as the Applicant) against the Order-in-Appeal No. BC/331/M-II/2011-12 dated 27.02.2012 passed by Commissioner of Central Excise, (Appeals), Mumbai-III, Mumbai Zone-II with respect to Order-in-Original No SP/19/ADCV/M-II/2010 dated 10.01.2011 passed by the Additional Commissioner of Central Excise , Mumbai-II.

2. Brief facts of the case are that the applicants are a public sector undertaking engaged in the business of refining of crude and marketing various petroleum products thereof. The applicants have a refinery at Mahul, Chembur, Mumbai. During the months of January, April, May, July and August 1997 the applicant transferred kerosene, LOBs, ATF etc from Mahul Refinery to up-country warehouse. 12 Show Cause Notices were issued to pay duty on account of either transferred losses or on failure to furnish re-warehousing certificate.

2.1. The Deputy Commissioner of Central Excise vide Order-in-Original No. 117/98/DC/BPS dated 25.09.1998 adjudicated the 12 Show Cause Notices and confirmed duty demand of Rs. 2,42,09,911/- after allowing 0.5% and 0.75% as condonation losses.

2.2. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals) who vide Order-in-Appeal No. RJB/48/M-II/2000 dated 08.09.2000 held that the computation of recoverable duty is correct and the order passed is also correct. That so far as show cause notice in respect of sl. no. 1 and 10 are concerned the assessee had claimed that they are having relevant copies of re-warehousing AR 3 A, the case was remanded back to Deputy/Assistant Commissioner to decide the same afresh taking into consideration the condonable loss.

2.3. The Joint Commissioner vide Order-in-Original No. 04/2003/JC/RLM dated 16.04.2003 held that Show Cause Notice issued at Sr. No. 1 and 10 are not in dispute, that in show cause notices at Sl. No. 3,4,7 and 9 re-warehousing certificates were submitted by the applicant, that in show cause notices at Sl. No. 2,5,6 and 8 allowed condonable loss and duty calculated accordingly, SCN at Sl. No. 12 the same was not disputed as the duty charged on transfer loss in excess of condonable limit and only SCN at Sl. No. 11 is in dispute. Thus the adjudicating authority confirmed the demand to the extent of Rs. 1,39,59,176/- after allowing condonable losses and also imposed penalty of Rs. 50,00,000/-.

2.4. The applicant filed appeal before the Commissioner (Appeals) who vide Order-in-Appeal No. PKA/90/M-II/2003 dated 29.08.2003 upheld the confirmation of duty demand ordered in the impugned Order-in-Original but set aside the penalty imposed

by the said Order-in-Original stating that there was no penalty imposed in the first adjudication order and same could not have done in subsequent de-novo proceedings

2.5. The applicant filed appeal before the Revisionary Authority who vide order no. 358/04 dated 29.10.2004 held that *'those cases where submissions of re-warehousing certificates is the issue, the authorities below held that proper endorsements are not present Government notes that the applicants are reputed NavRatna Public Sector Undertaking and they submit that proper accounting of the subject goods has been done. They also submit that the deposit of duty has already been made. Hence, Government is of the opinion that factual position is to be ascertained by the lower authority by making reference to the jurisdictional Central Excise Authorities'*.

2.6. The Additional Commissioner, Mumbai-II vide Order-in-Original No. SP/19/ADC/M-II/2010 dated 10.01.2011 decided the issue on limited mandate of analysing in respect of only those cases where submission of re-warehousing certificate is the issue and confirmed the duty of Rs. 1,41,94,512 involved under Rule 156 B (2) read with Rule 173 N of erstwhile Central Excise Rules, 1944 and for recovery of interest thereof.

3. Being aggrieved by the Order-in-Original the applicant filed an appeal before Commissioner (Appeals) who vide Order-in-Appeal No BC/331/M-II/2011-12 dated 27.02.2012 who rejected the same.

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

4.1. That with regard to demand at serial no. 1 and 11, the applicant submit that the cargo loaded was taken back at the applicants refinery tanks. That the tanker Basaveshwara was loaded with products for discharge at M/s Indian Oil Corporation at Vasco, Goa. That due to certain technical problems the cargo could not be discharged at the destination port and was received back at the applicant's refinery at Mumbai. That the products were duly received back into the tanks of applicant's refinery and duly accounted in the stock register RG-1 maintained by them at the refinery. That the relevant D 3 filed in this regard and the rewarehoused AR3As were produced for verification but have not been considered by the adjudicating authority.

4.2. That the duty demand of Rs. 3,15,255/- and Rs. 84,80,524/- (Total Rs. 87,95,779/-) on this account does not survive and should be reduced from the duty demand.

4.3. That serial no. 7 and 10 relates to shipment of two products through a single ocean going tanker loaded on the same voyage. That these are Aviation Turbine Fuel and SKO which are normally loaded together. That there was a gain in the

re-warehousing of AR 3As relating to SKO covered by Show Cause Notice at sl. no. 7 and loss in AR 3As relating to ATF covered by Show Cause Notice at sl. no. 10. That taken together as products sent by the same tanker, on the overall there was only a net gain. The total accountal of the product is summarized below:-

Sl. No.	Quantity shipped	Quantity received	Loss/Gain	Nett Gain
7	465.349	1,011.944	546.595	
10	2,449.366	1,925.643	-476.277	70.318

That the total voyage of the vessel Basaveshwara, there was no loss in the entire voyage but only a gain and hence the applicants submit that there is no duty liability arising in the voyage. That the AR3A for Show Cause Notice at sl. no. 7 has been considered, the AR 3A for the product that was loaded in the same tanker and unloaded along with that in Show Cause Notice at sl. no. 10 has been ignored. That these have to be taken together and the duty demand confirmed for the serial no. 10 needs to be set aside.

4.4. That with regard to demand at sl. no. 8 the board circular has provided for storage and handling loss on the product handled at the refinery. That it is not restricted only to the production quantity but to the entire volume handled which would include quantity received from outside. That the Board circular itself is mentioning that the condonation is with regard to loss in storage, handling of products and deliveries by pipelines, which is including the product received. That the circular also does not restrict it only to the quantity produced but is covering the aspect of loss in the activities. That it is not disputed that this quantity was stored and handled in the refinery during the month and such a case the applicants submit that the benefit of condonation needs to be given. That the quantity of condonation to be worked out including the quantity received from outside in which case the chargeable loss would be only Rs. 72,579/- and the same be held as payable.

4.5. That as regards serial nos 2,5,6 & 12 applicant do not wish to contest the claim and the duty liability against the above serial numbers is Rs. 8,71,477/-. That for serial no. 8 as against a duty demand of Rs. 3,04,987/- after re-computation, the loss is only Rs. 72,579/- which should be added to the above amount of Rs. 8,71,477/- thereby resulting a duty demand of Rs. 9,44,056/-.

4.6. That the duty as confirmed by the first Order-in-Original has been paid as pre-deposit and hence the question of interest does not arise in this case. That the Order-in-Original did not impose any interest on the duty demand.

4.7. The applicant placed reliance on following case laws:-

- Suresh Tobacco & Company Vs UOI (High Court of Orissa) 2007(213)ELT 429(Tri-Ahmedabad)
- IOCL Vs Commissioner of Central Excise, Ahmedbad-2009(243)ELT 453 (Tri-Ahmedabad)

5. Personal hearing scheduled in this case on 27.07.2015 was attended by Shri Rahul Yadav, Assistant Commissioner on behalf of department who reiterated grounds of revision application and stated that with regard to Sl. No. 1 & 10 there is no evidence that goods were received back in the refinery and proper procedure is not followed by the applicant. Ms. P. Vedavalli, Senior Manager (Finance), HPCL attended the hearing on behalf of the applicant who reiterated the grounds of revision application and also submitted additional written submission reiterating the same grounds and stated that demands pertaining to SCNs at Sr. No. 1,11,10 are being contested. That Sr. No. 1 & 11 question of endorsement at receiving end does not arise as goods were received back by the refinery due to technical problems and were not re-warehoused.

6. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of records, Government observes that the impugned orders have arisen from the remand proceedings as ordered by Government of India's Order No. 358/2004 dated 29.10.2004. In the first round of adjudication proceedings vide Order-in-Original No. 117/98/DC/BPS dated 25.09.1998 the Assistant Commissioner adjudicated the 12 Show Cause Notices and confirmed duty demand of Rs.2,42,09,911/- after allowing 0.5% and 0.75% as condonation losses. Commissioner (Appeals) vide Order-in-Appeal No. RJB/48/M-II/2000 dated 08.09.2000 held that the computation of recoverable duty as correct, order passed in respect of show cause notices at sl. no. 1 and 10 is also correct and in respect of re-warehoused certificates as claimed by the applicant. The case was remanded back to Joint Commissioner to decide the same afresh taking into consideration the condonable loss. The Joint Commissioner vide Order-in-Original No. 04/2003/JC/RLM dated 16.04.2003 stated that the denovo adjudication is confined to show cause notices at Sl. No. 2 to 9, 11 and 12 and held that Show Cause Notice issued at Sr. No. 1 and 10 are not in dispute, that in Show Cause Notices at Sl. No. 3,4,7 and 9 re-warehousing certificates were submitted by the applicant, in Show Cause Notice at Sl. No. 2,5,6 and 8 condonable loss has been allowed and duty calculated accordingly, in Show Cause Notice at Sl. No. 12 the duty charged on transfer loss in excess of condonable limit has not disputed by the applicant. Thus only show cause notice at Sl. No. 11 is in dispute. Thus the adjudicating authority confirmed the demand to the extent of Rs. 1,39,59,176/- after allowing condonable losses and also

imposed penalty of Rs.50,00,000/-. Commissioner(Appeals) vide Order-in-Appeal No. PKA/90/M-II/2003 dated 29.08.2003 upheld the Order-in-Original as far as the duty demand is confirmed but set aside the penalty imposed. The applicant filed appeal before the Revisionary Authority who vide order no. 358/04 dated 29.10.2004 partially confirmed the order passed by the adjudicating authority in respect of show cause notice issued in sl. no. 1 and 10 as correct and in other cases remanded back to the jurisdictional Central Excise authorities for the limited purpose of re-examining the re-warehousing certificates only. The Additional Commissioner, Mumbai-II vide Order-in-Original No. SP/19/ADC/M-II/2010 dated 10.01.2011 observing that re-warehousing certificates were an issue only in show cause notices no. 1,10,11 and therefore considered only these three cases and confirmed the duty amounting to Rs. 1,41,94,512/-. Commissioner (Appeals) vide Order-in-Appeal No BC/331/M-II/2011-12 dated 27.02.2012 rejected the appeal of the applicant. Now, the applicant has filed this Revision Application before the Central Government on the grounds mentioned at para 4 above.

8. Government observes that by its Order No. 358/2004 dated 29.10.2004, the Government had remanded the case back only pertaining to the show cause notice where re-warehousing certificates with proper endorsements were claimed to have been submitted by the applicant and deposit of duty done as under:-

'13. However, in those cases where submissions of re-warehousing certificates is the issue, the authorities below held that proper endorsements are not present Govt. notes that the applicants are reputed Nav Ratna Public Sector Undertaking & they submit that proper accounting of the subject goods has been done. They also submit that the deposit of duty has already been made. Hence, Government is of the opinion that factual position is to be ascertained by the lower authority by making reference to the jurisdictional Central Excise Authorities. The Applicants are also directed to do the same.

14. Hence, the matter is remanded to the lower authority partially, as specified above, for passing fresh order. Rest of the O-in-A is upheld."

9. Pursuant to the said order, the original authority vide Order-in-Original SP/19/ADCV/M-II/10 dated 10.01.2011 observed that only in show cause notices at Sl. No. 1,10 and 11 the submission of re-warehousing certificates is in doubt and upon verification held as under:-

" The range verification report inter alia mentioned that all the relevant re-warehousing certificates except AR 3A Nos 83 A,84A and 108 all dated 18.08.1997 have received by them and that in the subject case assessee had been asked to produce the copies of AR 3 A for necessary verification. Further at present also assessee could not submit any further evidences of re-warehousing of the said goods and which can be confirmed from assessee's letter dated 04.11.2010 that therein they have stated in their reply that 'copies of duly re-warehoused AR 3A has to be sent by

receiving location Excise Superintendent to dispatch location Superintendent and being an internal matter of Excise, and also they do not have the copies of such re-warehoused AR 3A with them. Further, they have stated that the department should rely on the AR3A which the Superintendent of Central Excise of Mumbai Refinery' has acknowledged that the product had moved out of Mumbai Refinery". I am not agreeing with the assessee's said contention, as per provisions of erstwhile Rule 156B, if consignor fails to present the triplicate acknowledged copies of AR 3A's application to the officer in charge of the warehouse of removal in the manner laid down in the said Rule and also duplicate copy of AR 3A's application endorsed with the said Rule and also duplicate copy of AR3A's application endorsed with the re-warehousing certificate has also not been received by such Range Officer from the officer-in-charge of the re-warehouse of destination in such case the consignor has not submitted the sufficient proof of re-warehousing of the said goods sent from their refinery and hence they are also liable to pay duty on such goods where even though the said goods had been sent to other warehouses but nothing is coming on the records that the same has been reached to the said destination mentioned in the AR 3As."

10. Thereafter, Commissioner (Appeals) in impugned Order-in-Appeal No. BC/331/M-II/2011-12 dated 27.02.2012 has discussed the factual aspects and observed in relevant paras as under:-

'6. In terms of the above provisions, it is incumbent upon the appellant to procure the re-warehousing certificate and submit the same to the concerned Central Excise officer within 90 days of transport permit. Non-submission of the same within 90 days would make the appellant to pay duty.

7. Further, in terms of Rule 156 B (2), if the appellant procures the said certificate with proper endorsement, after the mandatory 90 days and the same is produced before the proper Central Excise officer, then he can seek refund of the duty paid under Rule 156 A.

8. The appellants claimed that they have produced copies of D-3 to the lower Adjudicating Authority, hence the same may be allowed. With reference to this claim, the lower Adjudicating Authority, has clearly made a remark that the appellants have produced D-3 copies but the same were not countersigned by the concerned Central Excise officer. Copies of D-3 would become valid only when they are countersigned by the Central Excise offices at the receiving end. Hence the validity of the said D-3 copies would remain in limbo till the same are certified and countersigned. The appellants have, neither produced countersigned copies nor brought any new facts before me."

11. Government notes that the original authority and Commissioner (Appeals) has given detailed findings with regard to factual aspect of submission of re-warehousing certificate and observed that the same were not submitted by the applicant in the prescribed manner and also failed to account for the impugned goods. Such detailed factual findings have not been controverted in grounds of Revision Application by means of any factual submission, duly supported by any relevant documentary

evidences. Under such circumstances, the conclusion of appellate authority, based on such incontrovertible factual observations requires to be acceded to. Government thus holds that the applicant has clearly failed to duly account for the impugned goods and to submit the prescribed proof of their receipt/re-warehousing despite several opportunities given to them in remand proceedings from time to time.

12. In view of above facts and circumstances, Government finds no infirmity in impugned Order-in-Appeal and hence upholds the same.

13. Revision Application is thus rejected being devoid of merits.

14. So ordered.



(RIMJHIM PRASAD)

Joint Secretary to the Government of India

M/s Hindustan Petroleum Corporation Ltd.,
Mahul Village, Chembur,
Mumbai-400072.

Attested.



BHAGWAT P. SHARMA
OSD (R.A. WING)

ORDER NO. 55/2016-CX DATED 31.03.2016

Copy to:-

1. The Commissioner of Central Excise , Mumbai-II, 9th Floor, Piramal Chambers, Jijibouy Lane, Lalbagh, Mumbai-400012.
- 2 The Commissioner (Appeals), Mumbai-III, Central Excise, 5th Floor, CGO Complex, CBD Belapur, Navi Mumbai-400614.
3. The Additional Commissioner of Central Excise, Mumbai-II.
4. Ms. P. Veddavalli, Senior Manager-Finance, Mumbai Refinery, B.D. Patil Marg, Mahul, Mumbai-400074.
5. PA to JS (RA).
6. ✓ Guard File.
7. Spare Copy.

ATTESTED



(B.P. SHARMA)
OSD (RA)
GOVT. OF INDIA

BHAGWAT P. SHARMA
OSD (R.A. WING)

