



सत्यमेव जयते

## केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

केंद्रीय कर भवन,  
सातवीं मंजिल, पॉलिटेक्निक के पास,  
आम्बावाडी, अहमदाबाद-380015

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Ambavadi, Ahmedabad-380015

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रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(27)201/Ahd-I/2017-18  
V2(27)42/EA-2/Ahd-I/2017-18  
Stay Appl.No. /2017-18

*529170 5296*

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-022 to 023-2018-19  
दिनांक Date : 27-04-2018 जारी करने की तारीख Date of Issue

*25/7/2018*

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No MP/12/AC/Div-IV/17-18 दिनांक: 28.12.2017 issued by Astt. Commissioner, Div-IV, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
Indian Oil Corporation Ltd.  
Assistant Commissioner, CGST, Division-IV, Ahmedabad South  
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

### Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

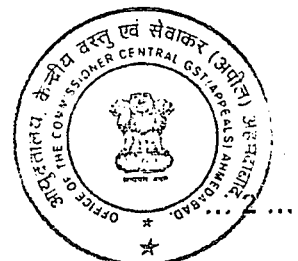
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।



(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई हैं और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

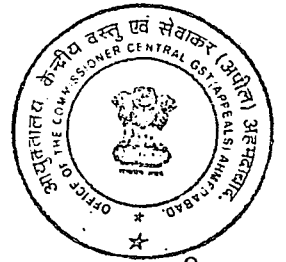
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपील के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल हॉस्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appel) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

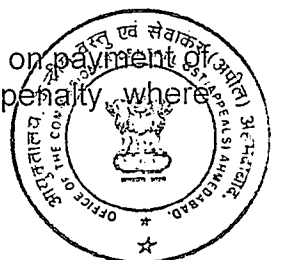
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty where penalty alone is in dispute."



**ORDER IN APPEAL**

Two appeals have been filed against OIO No. MP/12/AC/Div-IV/17-18 dated 28.12.2017 passed by the Assistant Commissioner, CGST, Division IV, Ahmedabad South Commissionerate [for short – 'adjudicating authority'], the details of which are as follows:

Sr. No.	Name of the appellant	Appeal No.
1	Indian Oil Corporation Limited, [for short IOCL] Sabarmati Terminal, Nr. D Cabin, Sabarmati, Ahmedabad 380 019.	201/Ahd-I/2017-18
2	Assistant Commissioner, CGST, Division IV, Ahmedabad South Commissionerate. [in terms of Review order No. 25/2017-18 dated 14.3.2018, issued by the Commissioner, CGST, Ahmedabad South]	42/EA2/Ahd-I/2017-18

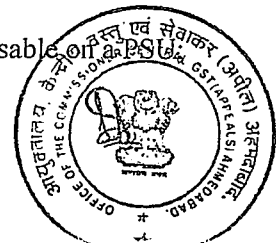
2. Briefly, M/s. IOCL had cleared HSD, without payment of duty of excise and additional duty of excise, under notification Nos. 108/95-CE dated 28.8.95, 136/94-CE dated 10.11.1994 and 22/2003-CE dated 31.3.2003. Since additional duty of excise on HSD was imposed w.e.f. 1.3.1999, vide section 133 read with second schedule of the Finance Act, 1999, it was not exempted, vide the aforementioned notifications. Therefore, two show cause notices dated 29.4.2004 and 30.3.2004, were issued to M/s. IOCL, *inter alia*, demanding central excise duty of Rs. 48,95,970/- for the period from April 1999 to February 2003 and Rs. 17,58,000/- for the period from March 2003 to June 2003, along with interest. The notices, further proposed penalty on the appellant under rule 173Q of the Central Excise Rules, 1944 and rule 25 of the Central Excise Rules, 2001, Rule 25 of the Central Excise Rule, 2002 read with Section 11AC of the Central Excise Act, 1944. The show cause notice dated 29.3.2004, was issued, invoking extended period.

3. These notices were adjudicated vide the aforementioned impugned OIO dated 28.12.2017, wherein the adjudicating authority, set aside the show cause notice dated 29.4.2004, confirmed the demand of Rs. 17.58 lacs along with interest and further imposed penalty of equivalent amount under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944.

4. Feeling aggrieved, both the appellants mentioned in the table *supra*, have filed appeals, raising the following contentions:

**Indian Oil Corporation Limited** [Sr. No. 1 of the table above]

- that penalty under section 11AC of the Central Excise Act, 1944, is not imposable since none of the criterion under the said section is available;
- that the show cause notice dated 29.4.2004 has been dropped after being held to be time barred; that there is a clear finding that there is no suppression of facts as well as no malafide intention to evade the duty liability;
- that they wish to rely on the case of VVF Ltd [2011(258) ELT 463], HPCL [2015(328) ELT 684], Markfed Refined Oil [2008(229) ELT 557], IIT [2016(42) STR 406];
- that as demand for earlier period has been held to be time barred, the demand for normal period even if confirmed, no penalty is not imposable;
- that as per the judgment of Markfed Refined [supra], penalty is not imposable;
- that penalty is not imposable in the absence of *mens rea*.



**Departmental appeal** [Sr. No. 2 of the table above]

- that adjudicating authority vide his letter dated 5.2.2018 has admitted that the appellant mentioned at Sr. No.1 above had not given intimation to division or range office regarding non-payment of duty;
- that IOCL had failed to mention the detail of the clearances in the returns submitted to the department; that where the appellant has failed to provide intimation to the department, extended period is invocable;

4.1 M/s. IOCL, in their cross objections submitted on 10.4.2018, raised the following contentions:

- that they are a Central PSU engaged in storing MS, HSD, SKO, ATF, falling under chapter 27 of CETA; that they had followed the procedure laid down in rule 156A, 156B, 173N(6) of the erstwhile Central Excise Rules, 1944; that they had complied with the procedure as prescribed under rule 20 of the Central Excise Rules, 2001/2002; that they had obtained necessary re-warehousing certificates from the consignees and entered it in the warehousing register; that they had filed periodical returns depicting clearances made without payment of duty; that they had filed declaration with the department about availing the benefit of the notifications;
- that there has been no contraventions of the provisions of law or any procedural/documentation requirements;
- that they had followed the required documentation procedure while effecting in bond movements of HSD to various 100% EOUs or to UN as envisaged in rule 156A/173N(6);
- that mere failure on their part to disclose certain information like mentioning of notification numbers in the monthly returns cannot be considered as positive or deliberate act of suppression;
- that there is no provision in law to assess duty on goods that are in a warehouse or goods which move from one warehouse to another; that they were removing the goods in bond which is not clearance of the goods from a warehouse as understood in the context of Rule 49 requiring payment of duty;
- that extended period of limitation is not invocable in the absence of conscious and deliberate suppression or willfull misstatement etc.,
- CT-3 certificates were issued by the jurisdictional central excise authorities of the receipt of HSD;
- AR-3As prepared for clearance of HSD and receipt by consignees was evidenced with re-warehousing certificate;
- that it is clear that every information/details were well within the knowledge of the department and there was no suppression of fact or mis-statement;
- that claiming exemption under a notification cannot be construed as suppression or mis declaration and therefore, extended period cannot be invoked.

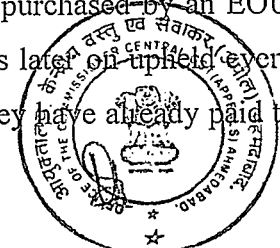
5. Personal hearing in the matter was held on 24.4.2018, wherein Shri T Chandran Nair, Advocate, Ms. Mansi Patel, Advocate and Shri Dinesh Chauhan AM(F), had appeared on behalf of the appellant mentioned at Sr. No.1 supra. They reiterated the grounds of appeal.

6. I have gone through the facts of the case, the grounds of appeal filed by both the appellants and the oral contentions raised during the course of personal hearing. The questions to be decided are

[a] whether penalty can be imposed on M/s. Indian Oil Corporation under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944; **and**

[b] whether the adjudicating authority was correct in setting aside the demand in respect of the show cause notice dated 29.4.2004 on limitation, or otherwise.

7. However, before deciding the aforementioned two questions, I would like to examine the legality of demand of additional duty of excise on HSD. As is already recorded by the adjudicating authority, the issue is no longer *res integra* as the Hon'ble Punjab High Court, vide its order reported at [2015(322) ELT 74] has held that HSD purchased by an EOU is not eligible for exemption from additional excise duty. This order was later on upheld even by the Hon'ble Supreme Court of India. In-fact, IOCL is on record that they have already paid the duty



confirmed by the adjudicating authority in respect of the show cause notice dated 30.3.2004. It is in this background, that I would be giving my findings on the aforementioned two questions.

8. Now coming to the questions to be decided, as listed in para 6 supra, I will first like to address the question mentioned at [b] above, viz-a-viz the grounds/plea raised in the departmental appeal. In the appeal filed by the Revenue, they are challenging the setting aside of the show cause notice dated 29.4.2004 which, as is already mentioned, was issued invoking the extended period. The departmental appeal further has in its grounds, mentioned that the adjudicating authority vide his letter dated 5.2.2018, has admitted that IOCL had not given intimation to division or range office regarding non-payment of central excise duty; that extended period can be invoked in cases where assessee/appellant fails to provide intimation to the department. The departmental appeal has also relied upon two case laws viz. Bombay Dyeing [1999(113) ELT 331] and Bharat Roll Industry [2008(229) ELT 107]. On going through the impugned OIO, I find that the adjudicating authority in para 22 of his findings, has held as follows:

*“ I find that the said assessee has failed to mention the full details of the clearances made in the monthly RT 12/ER 1 return filed with department and there is contravention of various provisions of law such as contravention of Rule 54 of Central Excise Rules, 1994 and Rule 12 of the Central Excise (No. 2 ) Rules, 2002 and Rule 12 of the Central Excise Rules, 2002 by not mentioning full particulars of the clearances made in the monthly RT 12 /ER 1 return and contravention of Rule 9, Rule 52 read with Rule 173F and 173 G of the Central Excise Rules, 1944, Rule 4,6 and 8 of the Central Excise (No. 2) Rules, 2001 and Rule 4,6 and 8 of the Central Excise Rules, 2002 by not paying the correct duty and contravention of Rule 173N of the Central Excise Rules, 1994 and Rule 20 of the Central Excise (No. 2) Rule, 2001 and Rule 20 of the Central Excise Rules, 2002 by not following the procedure prescribed in the Circular.”*

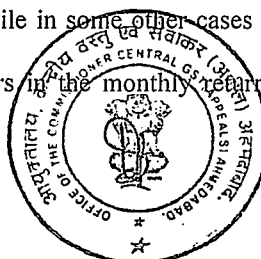
Thereafter, going further, in the same paragraph, the adjudicating authority has held that the details were available with the department and that there was no intent to evade duty on the part of the assessee. The adjudicating authority further goes on to state [in the said para]:

*“ I find force in the argument of the assessee that the details were available with the Department and hence there was no suppression or mis-statement etc. and I do not find the 'Intent to evade duty' on the part of said assessee for the reason that everything viz. full particulars of the clearances not made in the monthly RT 12 /ER 1 return etc.”*

The findings of the adjudicating authority, at best can be described as an oxymoron. Even otherwise, the adjudicating authority has refrained from giving a detailed finding for arriving at a conclusion that there was **no intent to evade duty on the part of the appellant**. Let me first examine whether the aforementioned finding is correct.

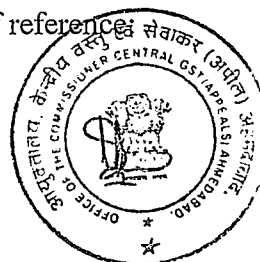
9. The charges against M/s. IOCL is that they

- did not follow the procedure prescribed so far as movement of goods from one warehouse to another is concerned;
- failed to file the quadruplicate copy of the application for removal with the range Superintendent;
- failed to mention the notification No. under which the goods were removed without payment of duty;
- had mentioned only the quantity of removal in the monthly return;
- that in some cases the type of removal was shown as *bonded* while in some other cases the quantity was shown against the column *removal without payment of duty*;
- that they had failed to mention the relevant notification numbers in the monthly returns filed with the department.



As is already mentioned the demand in respect of the notice dated 29.4.2004 was dropped by the adjudicating authority, on the grounds of limitation while IOCL, has already discharged the duty demand raised vide show cause notice dated 30.3.2004, which was confirmed by the adjudicating authority. IOCL, in its cross objections amongst various other grounds, has claimed that the demand raised vide show cause notice dated 29.4.2004 **is hit by limitation**. The charges listed against IOCL for which they have not offered any plausible defence, clearly points to suppression. The act of the IOCL's employee, authorized to file returns, of suppressing and mis stating information in the returns filed with the department, clearly puts the onus on the appellant himself and clearly points to suppression on their part. It clearly reflects IOCL's intent to defraud revenue. IOCL's attempt to rely on cases wherein there have been genuine mistakes of some information being left out in the return, through oversight, to take relief in their case, is not a tenable argument. Moreover, I find that IOCL has violated/contravened the provisions of the Act and the rules. Further, their act of discharging the duty in respect of the show cause notice dated 30.3.2004 and thereafter citing limitation in respect of a similar demand for the earlier period, in respect of show cause notice dated 29.4.2004, clearly leads one to a conclusion that though IOCL knew that it was a legitimate due to the Government, they conspired not to pay the duty. I also find that there is a clear cut intent on the part of IOCL to evade payment of duty, which is manifested by their reliance on limitation to evade the statutory dues to the Government.

10. On the appellant relying on limitation, I am constrained to state that I find this claim to be appalling, coming more so from a Central PSU. It does not behove a Central PSU to evade/not pay legitimate dues, under the shield of *mens rea* /limitation. This reflects poorly on IOCL, more so since the objection was raised by none other than the Comptroller and Auditor General of India and the issue stands settled by the highest court of the land viz. the Hon'ble Supreme Court of India. In hindsight, I feel that it would have been more appropriate for IOCL to have approached the department after discharging the duty [without challenging it on the grounds of limitation], **since they very well knew it was a legitimate due to the Central Government.** In a catena of decisions, Courts have held that a PSU will not have "intent" to evade on the ground that they have always paid legitimate duty to the Government and have pleaded to waive penalty, etc.. In the present case, the PSU is contesting the legitimate duty to the Government under the garb of limitation, showing their clear "intent" – not to pay duty under any pretext. It is in this light that their entire activities should be viewed. The even failed to disclose the full facts in their monthly returns. A scanned copy of the RT 12 monthly return attached by the appellant with the appeal papers is reproduced for ease of reference.





Indian Oil

**INDIAN OIL CORPORATION LIMITED**  
(MARKETING DIVISION)  
SABARMATI TERMINAL  
NEAR D CABIN, SABARMATI,  
AHMEDABAD-380019  
Phone : 7506323 / 7507245 Fax : 7506152

Ref.No. SBT/ EXCISE

05<sup>th</sup> July 2002

The Supdt of Central Excise,  
Range-V Div V  
AHMEDABAD.

Dear Sir,

~~Subsequent to the above mentioned~~ Forwarding a monthly return.

We are submitting following documents for the month of July 02

1. RT 12 (IN QUADRUPLICATE)
2. PLA (IN DUPLICATE)
3. TR& 6 CHALLANS
4. DETAILS OF BONDED CLEARANCE
5. Statement OF DUTY PAYMENT
6. COPIES OF OUTTURN

Thanking You,  
Yours faithfully

FOR INDIAN OIL CORPORATION LTD

*B Venkatesh*  
**B. VENKATESH**  
ASST. MANAGER (F)  
Asst. Manager (Finance)  
Indian Oil Corporation Ltd.  
Sabarmati Terminal, Ahmedabad.

*Handwritten notes:*  
5/8/02  
Supply C. Ex.  
At D. Cabin

Central Excise Series No. 79-B

RT-12

Return for the month of JULY 2002

1. Name of Assessee: **M/S. Indian Oil Corporation Ltd.**
2. New ECC No./Registration No.: **NEW ECC NO. AAAC116816XMO88**
3. Address: **Sabarmati Terminal, Nr. 'D' Cabin, Sabarmati, Ahmedabad.**

4(a) Details of Excisable goods manufactured for the month (qty in kl at 15°C)

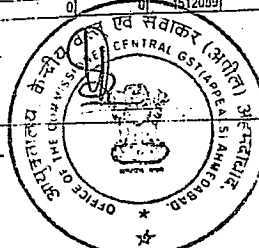
Product Description	CETCH	Unit	Opening Balance	Quantity Received	Gain (Loss)	Quantity removed		Closing Balance
						on pay. of duty	without pay. of duty	
MS	2710.19	KL	2380.829	24233.099	-21.480	23646.660	0.000	2946.400
SKO	2710.20	KL	4482.850	32598.256	14.702	29127.209	0.000	7878.679
HSD	2710.30	KL	16978.934	105188.922	-6.708	99824.208	355.347	21981.563
ATF	2710.21	KL	7291.485	0.000	-2.072	4541.054	1780.000	967.559

4(b) Details of Excisable goods manufactured for the month (qty in kl at 15°C)

Product Description	CETCH	Unit	Opening Balance	Quantity Received	Gain (Loss)	Quantity removed		Closing Balance
						on pay. of duty	without pay. of duty	
MS	2710.19	KL	2472.769	24,684.252	21.294	24116.885	0.000	3061.460
SKO (DOM)	2710.20	KL	4671.177	32,926.303	81.309	29571.033	0.000	8107.755
SKO (IND)	2710.20	KL	0.000	24.000	0.000	24.000	0.000	0.000
HSD	2710.30	KL	16354.755	105,765.643	239.047	100478.353	360.000	22521.092
ATF	2710.21	KL	7426.466	0.000	22.585	5099.000	1385.000	1005.031

5. Details of removals of all excisable goods on which duty is payable in the first fortnight of the month including duty liability and payment particulars relating to the said periods:

Product Description	Quantity Removed	Assessable Value	Basic Duty payable	Special Duty payable	Add'l + Spl duty payable	Total Duty paid thru PLA		
						Basic	Special	Add'l + Spl Ad
MS	11689.818	137435138	21905622	19240919	81268726	21905622	19240919	81268726
SKO (DOM)	14455.120	102155600	16344866	0	0	16344866	0	0
SKO (IND)	0.000	0	0	0	0	0	0	0
HSD	52310.216	640464543	85665036	0	52316216	85665036	0	52316216
ATF	2241.000	28200566	4512009	0	0	4512009	0	0



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Handwritten mark



B. Duty payment details								
Date of pay-ment of duty	Mode of payment	CENVAT	SDE	AED	SPL T&T	Arkl Duty	Others	Total Duty
20.05.2002	PLA	132511643	19240910	133584942	0	0	0	205337661

C. Interest payment on account of delay in payment of duty		
Amount of interest payable	Amount of interest paid	Date and mode of payment
NIL	NIL	NIL

6. Details of removals of all excisable goods on which duty is payable in the second fortnight including duty liability and payment particulars relating to the said periods

A. Removals									
Product Description	Quantity Removed	Assessable Value	Basic Duty payable	Special Duty payable	Add'l Spl duty payable	Total Duty paid through PLA			
						Basic	Special	Add'l Spl	Add'l
MS	12807.007	147409056	23580245	20640469	07540469	23580245	20640469	07540469	07540469
SKO (DOM)	15115.913	101913104	16300111	0	0	16300111	0	0	0
SKO (IND)	24.000	327730	52430	0	0	52430	0	0	40102137
HSD	40102.137	580572971	8309039	0	40102137	8309039	0	0	0
ATF	2020.000	35714031	5714245	0	0	5714245	0	0	0

B. Duty payment details								
Date of pay-ment of duty	Mode of payment	CENVAT	SDE	AED	AED T&T	Arkl Duty	Others	Total Duty
05.08.2002	PLA	129471670	20640469	135711600	0	0	0	205031752

C. Interest payment on account of delay in payment of duty		
Amount of interest payable	Amount of interest paid	Date and mode of payment
NIL	NIL	NIL

7. Details of removals of all excisable goods on which duty is payable in the third month of the quarter including duty liability and payment particulars relating to the said periods

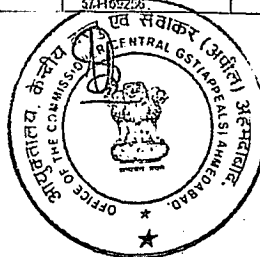
A. Removals						
Product Description	Quantity Removed	Assessable Value	Rate of duty	Total Duty payable	Total Duty paid	
					PLA	CENVAT
NIL						

B. Duty payment details								
Date of pay-ment of duty	Mode of payment	CENVAT	SDE	AED	AED T&T	Arkl Duty	Others	Total Duty
NIL								

C. Interest payment on account of delay in payment of duty		
Amount of interest payable	Amount of interest paid	Date and mode of payment
NIL	NIL	NIL

B. Details of goods cleared without payment of duty or under full exemption or at nil rate of duty						
Product Description	Unit	CEYSH	Type of clearance	Quantity cleared	Value of goods cleared	Duty
ATF	KL	2710.90	Bonded	1383.000	17450783	2790525
HSE	KL	2710.90	Bonded	350.000	4474207	526327

9. Total duty and interest paid during the month			
	Duty	Other payments	Total Duty
PLA	571169256		571169256
CENVAT credit	0	0	0
Total	571169256	0	571169256



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X



6. Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word "wilful" preceding the words "mis-statement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or Rules" are again qualified by the immediately following words "with intent to evade payment of duty". It is, therefore, not correct to say that there can be a suppression or mis-statement of fact, which is not wilful and yet constitutes a permissible ground for the purpose of the proviso to Section 11A. Mis-statement or suppression of fact must be wilful.

As is evident in the present case, there was a willful suppression of facts, with a clear intent to evade payment of duty on the part of M/s. IOCL as is clearly evident from the aforementioned discussions and therefore, I find that the appellant cannot escape payment of legitimate dues to the Government, under the cover of limitation.

13. Thus, in view of the foregoing IOCL's claim to plead limitation is not tenable. I also find that the adjudicating authority erred in holding that there was no intent to evade duty on the part of IOCL. Accordingly, the setting aside of the demand by the adjudicating authority, on the grounds of limitation, is not correct in law and to this extent the impugned OIO is set aside. In view of my aforementioned findings, I confirm the duty of Rs. 48,95,970/- [SCN dated 29.4.2004] along with interest and further impose penalty of amount equivalent to duty under rule 173Q of CER '44 and rule 25 of the CER 2001 and rule 25 of CER 2002 read with section 11AC of the Central Excise Act, 1944, on the appellant. Accordingly, the appeal filed by the department is allowed.

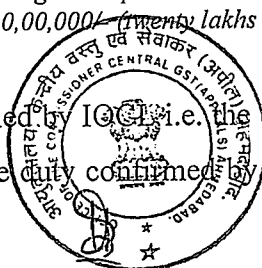
14. Before parting with the question mentioned at [b], supra, I would also like to discuss the last contention raised of IOCL that a PSU cannot be held to have acted with *mala fide* intent. The contention is not legally tenable since the Hon'ble Tribunal in the case of BPCL [2009 (242) E.L.T. 358 (Tri. - Mumbai)], in para 46 has held as follows:

46. On the question of penalty, the Ld. Counsel has argued that a PSU cannot be held to act with *mala fide* intent. The Ld. Joint CDR has rightly countered this argument relying on a number of decisions, where substantial penalties have been imposed on the PSUs. In fact, one of the cases cited by the Ld. Joint CDR relates to the appellants themselves, though in another case. Once the invoking of the extended time limit has been upheld, mandatory penalty is imposable under Section 11AC of the Central Excise Act, 1944 [Dharamendra Textile Processors reported in 2008 (231) E.L.T. 3 (S.C.)]. We uphold the penalty of Rs. 119,21,06,264/- (Rupees One hundred Nineteen Crores Twenty One Lakhs Six Thousand Two hundred Sixty Four only) imposed on the appellants by the Commissioner.

Further, in the case of Electronic Corporation of India [2001 (137) E.L.T. 1031 (Tri. - Mum)], which has been upheld even by the Hon'ble Supreme Court of India, the Hon'ble Tribunal held as follows :

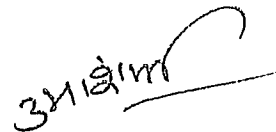
25. M/s. ECIL, however, are differently situated. That they had conspired not to pay the duty correctly leviable, is evident in our discussions above and thus their liability to penalty is established. At the same time we must accept that it is a loss making PSU. A significant quantum of penalty on them would mean a penalty on the exchequer and indirectly on the general public. We therefore, holding that they are liable to penalty, reduce the quantum thereof to Rs. 20,00,000/- (twenty lakhs only).

15. Now coming to the appeal filed by IOCL, i.e. the question mentioned at [a] supra, I find that the appellant has already paid the duty confirmed by the adjudicating authority. The



appeal is against the imposition of penalty of Rs. 17,58,000/- under rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944, in respect of the show cause notice dated 30.3.2004. The appellant has pleaded that when the adjudicating authority has himself held that extended period is not invocable, the imposition of penalty under Rule 25 of the Central Excise Rules, 2002, was bad in law. The argument now loses relevance since I have in the para *supra* already held that there was suppression by IOCL with an intent to evade payment of duty. Therefore, I find that the penalty in the matter has been correctly imposed by the adjudicating authority. In view of the foregoing, the appeal filed by M/s. IOC is rejected.

16. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
16. The appeal filed by the appellants stands disposed of in above terms.

  
(उमा शंकर)  
आयुक्त (अपील्स)

Date: 27.4.2018

Attested



(Vinod Lukose)  
Superintendent (Appeal),  
Central Tax,  
Ahmedabad.

By RPAD.

To,

Indian Oil Corporation Limited, Sabarmati Terminal, Nr. D Cabin, Sabarmati, Ahmedabad 380 019.	Assistant Commissioner, CGST, Division IV, Central Tax, Ahmedabad South Commissionerate.
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Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Principal Commissioner, Central Tax, Ahmedabad South.
3. The Deputy/Assistant Commissioner, Central Tax Division-IV, Ahmedabad South.
4. The Assistant Commissioner, System, Central Tax, Ahmedabad South.
5. Guard File.
6. P.A.

