



आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065 - टेलिफैक्स 07926305136



DIN : 20230364SW0000000E7B

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/CEXD/34/2022 } 9390-94
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-179/2022-23
दिनांक Date : 13-03-2023 जारी करने की तारीख Date of Issue 14.03.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. MP/08/AC/Div-IV/22-23 दिनांक: 29.04.2022 passed by Assistant Commissioner, CGST, Division-IV, Ahmedabad South
- ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

- The Deputy Commissioner
CGST Division-IV, Ahmedabad South
5th Floor, GST Bhawan, Ambawadi, Ahmedabad - 380015

Respondent

- M/s Indian Oil Corporation Ltd
Sabarmati Terminal, Near D Cabin,
Sabarmati, Ahmedabad - 380019

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 :

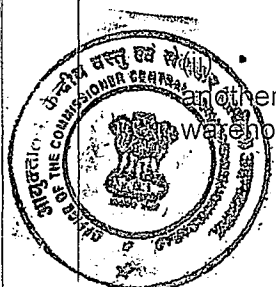
Revision application to Government of India:

(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, 4th 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 हानिकार खाने 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 प्रकिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to other 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.



- (क) 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।
- (A) 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.

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

- (B) 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 है 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।

- (c) 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए।उसके साथ खाता इ.का मुख्य शीर्ष 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 होतो रुपये 200/-फीस भुगतान की जाए और जहाँ संलग्नरकम 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.

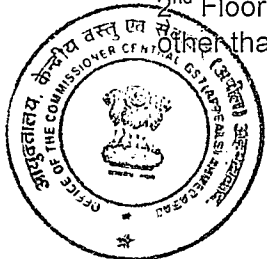
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

- (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, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

- (a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd Floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. 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(Appeal) 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 Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू.6.50 पैसे कान्यायालय 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.

- 2^o सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट), के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

- a. (Section) खंड 11D के तहत निर्धारित राशि;
इण लिया गलत सेनवैट क्रेडिट की राशि;
बण 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:

- (lxxix) amount determined under Section 11 D;
(lxxx) amount of erroneous Cenvat Credit taken;
(lxxxi) amount payable under Rule 6 of the Cenvat Credit Rules.

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 % of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

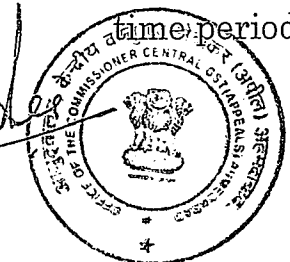


ORDER-IN-APPEAL

The present appeal has been filed by the Deputy Commissioner, CGST, Division-IV, Commissionerate- Ahmedabad South (hereinafter referred to as the appellant), on the basis of Review Order No. 34/2021-22 dated 29.07.2022 passed by the Principal Commissioner, Central GST, Ahmedabad South Commissionerate in terms of Section 35E(2) of the Central Excise Act, 1944, against Order in Original No. MP/08/AC/Div-IV/22-23 dated 29.04.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division-IV, Commissionerate- Ahmedabad South [hereinafter referred to as "*adjudicating authority*"] in the case of M/s. Indian Oil Corporation Limited, Sabarmati Terminal, Near 'D' Cabin, Sabarmati, Ahmedabad-380 019 [hereinafter referred to as the respondent].

2. Briefly stated, the facts of the case are that the respondent are engaged in the storage and clearance of petroleum products viz. Motor Spirit (MS), High Speed Diesel (HSD), Refined Diesel Oil (RDO), Superior Kerosene Oil (SKO) and Aviation Turbine Fuel (ATF) falling under Chapter 27 of the Central Excise Tariff Act, 1985. The respondent had cleared the said products under Rule 173N of the erstwhile Central Excise Rules, 1944 to its different warehouses/places. As per Rule 156B (2) of the said Rules, if the original application, i.e. AR3A, endorsed with re-warehousing certificate is not received by the officer in charge of the warehouse, within 90 days of the removal of the goods or within such extended period as is allowed by the proper officer, the consignor shall pay duty on demand by the proper officer within 10 days of notice and if the duty is not paid, he shall not be permitted to make fresh removal of any warehoused goods until the duty is paid or until the certificate of re-warehousing is presented to the officer in charge of the warehouse of removal. The respondent had failed to produce the re-warehousing certificates, in respect of the goods removed by them, with proper attestation by the Central Excise Officer, in respect of the AR3As under which the goods were cleared under Rule 173N within the stipulated

time period.



2.1 The respondent were, therefore, issued 20 Show Cause Notices, wherein it was proposed to :

- a) Demand and recover the Central Excise duty totally amounting to Rs.8,28,01,789/- in terms of Rule 156B(2) read with Rule 156A(2), Rule 173N and Rule 160 of the Central Excise Rules, 1944 read with Section 11A of the Central Excise Act, 1944.
- b) Impose penalty under Rule 210 of the Central Excise Rules, 1944.
- c) Not permit them to make fresh removal of any warehoused goods under Rule 156B(2) read with Rule 173N of the Central Excise Rules, 1944.

3. The SCNs were adjudicated by the Assistant Commissioner, Central Excise, Division-V, Ahmedabad vide OIO No. 84 to 103/1998 dated 31.03.1998 and the demand of Central Excise duty amounting to Rs.8,01,28,083/- was confirmed, while the demand of central excise duty amounting to Rs.26,73,706/- was dropped. Penalty amounting to Rs.2,00,000/- was imposed under Rule 210 of the Central Excise Rules, 1944.

4. Being aggrieved, the respondent preferred appeal before the Commissioner (Appeals), Ahmedabad, who vide OIA No. 25/2001(18-Ahd-I)CE/Commr.(A)/Ahd dated 18.01.2001 upheld the confirmation of demand to the extent of Rs.2,13,43,385/-. Additionally, the duty demand in respect of the AR3As mentioned in the said OIA was also upheld as entry number and date of re-warehousing register was not provided for these AR3As. In respect of the other AR3As, the matter was remanded back to the adjudicating authority to verify whether the AR3As were duly certified by the Central Excise Officer at the Consignee's end and if found that the goods were duty warehoused at the Consignee's end, duty should not be demanded. The penalty under Rule 210 of the Central Excise Rules, 1944 was also reduced to Rs.50,000/-.

5. Being aggrieved by the said OIA, the respondent filed appeal before the Hon'ble CESTAT, Ahmedabad, who vide Order No. A/1189/WZB/Ahd/09 dated 08.06.2009 remanded the matter back to the adjudicating authority

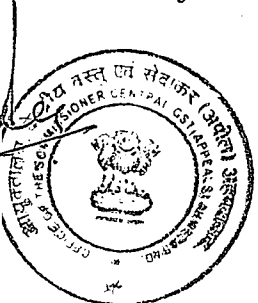


and directed the respondent to produce collateral evidence of details of the entry number in the warehouse register by the consignee. It was also ordered that if the respondent fails to produce collateral evidence of entry number within three months from the date of receipt of the said order or within such extended period as may be allowed the adjudicating authority or the Commissioner, the duty involved shall be paid and the order of the Commissioner (Appeals) shall stand. The penalty amounting to Rs.50,000/- imposed on the respondent was set aside.

6. In the remand proceedings, the matter was decided vide OIO No. MP/58/AD/DA/209 dated 30.11.2009, read with Corrigendum dated 08.02.2010 and 18.02.2010, wherein the central excise duty amounting to Rs.2,13,43,385/- plus the duty amounting to Rs.14,35,940/- involved in 12 AR3As listed in the said OIA, was confirmed. The total duty confirmed amounted to Rs.2,27,79,325/-.

7. Being aggrieved by the said OIO dated 30.11.2009, the department filed appeal before the Commissioner (Appeals), Ahmedabad on the grounds that the adjudicating authority was required to re-adjudicate the part of the demand remanded back by the Commissioner (Appeals) vide OIA dated 18.01.2001 and also re-adjudicate the amount of demand upheld by the said OIA dated 18.01.2001, in terms of the Order dated 08.06.2009 of the Hon'ble Tribunal. The respondent also filed appeal before the Commissioner (Appeals), Ahmedabad against OIO dated 30.11.2009.

8. The Commissioner (Appeals), Ahmedabad vide OIA No. 196 to 197/2010 dated 06.07.2010 directed the adjudicating authority to re-examine the AR3As, duly countersigned by the officers at the consignee's end, involving central excise duty amounting to Rs.5,73,48,758/- and also directed to re-examine the AR3As, in respect of which entry number and date of re-warehousing register are not mentioned, involving central excise duty amounting to Rs.2,27,79,325/.



9. Being aggrieved by OIA dated 06.07.2010, the department filed appeal before the Hon'ble CESTAT, Ahmedabad, who vide Order No. A/1607-1608//WZB/AHD/2011 and M/1675/WZB/AHD/2011 dated 29.08.2011 set aside the impugned order and directed the adjudicating authority to decide the matter afresh.
10. In the remand proceedings, the matter was adjudicated vide OIO No.MP/02/DC/2012/D dated 17.05.2012 wherein the demand of central excise duty amounting to Rs.8,28,01,789/- was confirmed and penalty amounting to Rs.2,00,000/- was imposed under Rule 210 of the Central Excise Rules, 1944.
11. Being aggrieved by OIO dated 17.05.2012, the respondent filed appeal before the Commissioner (Appeals), Ahmedabad, who vide OIA No. 121/2012(Ahd-I)CE/AK/Commr(A)/Ahd dated 24.12.2012 partly upheld the said OIO and remanded the case back to the adjudicating authority to decide the matter in terms of the directions contained in the said OIA. The penalty amounting to Rs.2,00,000/- was set aside.
12. Being aggrieved by OIA dated 24.12.2012, the department filed an appeal before the Hon'ble CESTAT, Ahmedabad on the grounds that the Commissioner (Appeals) should not have remanded the matter, which is contrary to the provisions of law. The Hon'ble Tribunal vide Order No. A/10999/2015 dated 09.07.2015 disposed of the appeal by holding that the directions of the Commissioner (Appeals) to remand the case to the adjudicating authority was justified.
13. In the remand proceedings, the matter was adjudicated vide OIO No. MP/05/AC/DIV-IV/2018-19 dated 21.10.2018, wherein the demand of central excise duty amounting to Rs.3,87,75,446/- was confirmed, whereas the demand of central excise duty amounting to Rs.4,40,26,343/- was dropped.



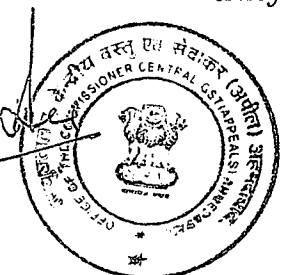
14. Being aggrieved by OIO dated 21.10.2018, the respondent filed appeal before the Commissioner (Appeals), Ahmedabad, who vide OIA No. AHM/EXCUS/001/APP/065/2019-20 dated 25.11.2019 upheld the demand of Rs.46,97,922/- in respect of 16 AR3As, as the respondent had not disputed the confirmation of demand and payment made by them was accepted. The demand amounting to Rs.42,02,083/- in respect of 37 AR3As was remanded back to re-examine the issue after discussing the status of the refund claim filed by the respondent in respect of 27 AR3As, involving duty amounting to Rs.33,01,787/-. The Commissioner (Appeals) also remanded the case to re-examine the demand of :

- i. Rs.13,43,603/- in respect of 7 AR3As where the respondent had paid duty in the shortage quantity.
- ii. Rs.10,52,274/- in respect of 10 AR3As where the jurisdictional Range Superintendent had confirmed re-warehousing of the goods.
- iii. Rs.34,36,112/- in respect of 27 AR3As where the original/photocopies were signed by the Consignee and jurisdictional Superintendent/Inspector.
- iv. Rs.2,40,43,452/- in respect of 438 AR3As where the respondent had submitted original/photocopies/collateral evidences signed by the consignee.

15. In the denovo proceedings, the case was decided vide the impugned order, wherein :

A. Out of the total demand of Rs.42,02,083/-, the demand of central excise duty amounting to Rs.38,82,313/- in respect of 33 AR3As was confirmed while the demand amounting to Rs.3,19,770/- was dropped. As the amount of Rs.42,02,083/- was earlier appropriated vide Refund Order No. 97/AC/2013/Refund dated 13.08.2013 towards the government dues, the demand of Rs.38,82,313/- was held to have been already recovered.

B. The demand of central excise duty amounting to Rs.8,27,029/- in respect of 6 AR3As was confirmed, while the demand of central excise duty amounting to Rs.2,90,48,411/- in respect of 476 AR3As, out of the



total demand of Rs.2,98,75,441/- in respect of 482 AR3As, was dropped.

16. Being aggrieved with the impugned order, the appellant department have filed the present appeal on the following grounds :
- i. The adjudicating authority has erred in dropping the demand of central excise duty amounting to Rs.2,93,68,181/-.
 - ii. The demand was raised on the grounds that the respondent had failed to produce re-warehousing certificates of the goods removed under various AR3As under Rule 173N.
 - iii. From a plain reading of Rule 156A and 156B of the Central Excise Rules, 1944, it is clear that the officer in charge of the warehouse of consignee, shall after taking account of the goods, countersign the AR3As and return the Duplicate to the Officer in charge of the Warehouse of removal and Triplicate to the Consignee for dispatch to the consignor.
 - iv. If the re-warehousing certificate along with entry number in the warehouse register of the consignee is not received by the officer in charge of the warehouse of removal, the consignor shall, on demand by the proper officer, pay the duty leviable on such goods. Therefore, the respondent is bound to submit copies of the AR3As duly certified by the officer in charge of the consignee.
 - v. The demand has been dropped in respect of the AR3As where the respondent had paid duty on shortages by assuming that the total quantity has been received by the consignee. This finding is based on assumption as the respondent has not furnished the countersigned re-warehousing certificate with entry number in warehouse register of the consignee.
 - vi. The impugned order has been passed in violation of Rule 156A and 156B of the Central Excise Rules, 1944.
 - vii. The adjudicating authority has dropped demand in respect of those AR3As where Entry Number/date of warehousing register are found in the photocopies of the AR3As. This is not as per the provisions of Rule 156A and 156B of the said Rules. The respondent has not



furnished AR3As countersigned by the officer in charge of the warehouse of the consignee.

- viii. The adjudicating authority has dropped demand in respect of some AR3As based on the confirmation of re-warehousing by the Range Superintendent by way of letter. This is not in conformity with the provisions of Rule 156A and 156B of the said Rules.
- ix. The adjudicating authority has dropped the demand in respect of the remaining AR3As which were signed by the consignee and photocopy of the same was certified by the Superintendent and photocopy of AR3A was signed by the Inspector. This is not in conformity with the provisions of Rule 156A and 156B of the said Rules.
- x. The Hon'ble Tribunal, Ahmedabad had vide Order dated 08.06.2009 made observations regarding the importance of procedural requirement in this case. The adjudicating authority has dropped the demand without receipt/verification of the proper documents as prescribed under Rule 156A of the said Rules.

17. Personal Hearing in the case was held on 12.01.2023. Shri Sachin Chitnis, Advocate, appeared on behalf of the respondent for the hearing. He reiterated the submissions made in cross-objection to appeal dated 20.12.2022.

18. In the cross-objection filed on 20.12.2022, the respondent submitted, inter alia, that:

- Invoking Rule 156A and Rule 156B as modified by Rule 173N of the Central Excise Rules, 1944 is incorrect when the Tribunal has already settled the issue.
- The impugned appeal and review order goes back to the very same provisions and invoking the said provisions, it is claimed that since the prescribed procedure under Rule 156A and 156B of the said Rules has not been complied with, dropping the demand in the impugned order is not correct.

➤ OIA No. AHM-EXCUS-001-APP-065-2019-20 dated 25.11.2019 has not been challenged by the department and, hence, present appeal by



department questioning the correctness of the impugned order is not correct.

- Therefore, the impugned appeal reviving the issue, allegations and the findings in the orders passed prior to the Tribunal's order dated 08.06.2009 and OIA dated 25.11.2019 is not legally correct.
- The impugned order dropping the demand on shortages is proper and legal. The adjudicating authority has dropped the demand amounting to Rs.13,43,603/- in respect of seven AR3As and Rs.6,32,787/- in respect of two AR3As on the basis of the duty paid on shortages. Similarly, the adjudicating authority has also dropped the demand amounting to Rs.53,94,875/- based on the duty paid on shortages.
- To substantiate that demand on shortage quantity is not sustainable, they had submitted copies of AR3As evidencing payment of central excise duty and which was verified by the adjudicating authority.
- The adjudicating authority has dropped the demand amounting to Rs.1,61,28,230/- by appreciating the collateral evidences like Entry No./date of warehousing register found in photocopies of the AR3As showing receipt of goods.
- The demand of Rs.10,60,530/- has been dropped by the adjudicating authority by holding that the goods have been received and accounted for in the warehousing locations.
- No specific grounds have been shown to rebut the collateral evidences submitted by them and relied upon by the adjudicating authority.
- The department has questioned the correctness of dropping the demand solely on the ground of non following of the procedure under Rule 156A and 156B of the Central Excise Rules, 1944, which is incorrect in view of the Tribunal's order dated 08.06.2009.
- Against the total demand of Rs.3,40,77,524/-, the adjudicating authority has, appreciating the evidences on record, dropped the demand amounting to Rs.2,93,68,181/-.
- The department's appeal invoking Rule 156A and 156B is incorrect as Rule 173N(6) of the Central Excise Rules, 1944 would be applicable.
- The jurisdictional central excise officers were duty bound to send the original copy of AR3A received from them to the officer in charge of



the dispatching unit. The lapse in on the part of the jurisdictional officer in charge of the receiving unit. For the said lapse on the part of the department, they have been held responsible.

- The Hon'ble Tribunal had in their Order dated 08.06.2009 held that collateral evidence to substantiate receipt of goods by various receiving locations should be accepted.
- The adjudicating authority has implemented the directions of OIA dated 25.11.2019 and CESTAT's Order dated 08.06.2009. Having not challenged the said order, the question of now reviewing the order would not arise.
- Reviewing the impugned order on grounds which have already been settled in their favour is not correct. Hence, dropping of demand amounting to Rs.2,93,68,181/- is legal and proper.
- There is no statutory requirement that re-warehousing certificate received from consignee should be attested by the officer in charge of the consignee. The only requirement is to submit AR3A (duplicate) duly endorsed by consignee, which they have submitted for all goods.
- They had replied to all 20 SCNs stating that the disputed AR3As have been re-warehoused by the consignee location and photocopies of the same have also been submitted. Also collateral evidences, including photocopies of AR3As duly endorsed by consignee and countersigned by jurisdictional central excise officers have been submitted.
- They have also submitted photocopies of the duplicate AR3As to establish the goods removed under AR3As have already been received by the consignee and proper certification has also been made in the application.
- They had got the goods re-warehoused and received re-warehousing certificates from consignee's end. Only the department has not received the re-warehousing certificate from the Range at consignee's end.
- Under Rule 156B as modified by Rule 173N, they were only required to give the certificate from consignees and not from the Range Office. They had produced all the certificates from the consignee.

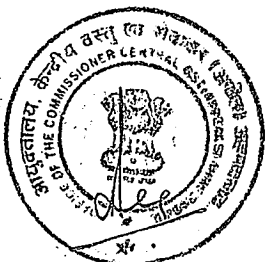


- Substantial benefit of exemption is not deniable in view of the judgment in the case of J.K. Synthetics – 2000 (120) ELT 54 (SC); Thermax Pvt. Ltd. – 1992 (61) ELT 352 (SC); National Aluminum Co. – 2000 (125) ELT 519 (T); Shalimar Chemical – 2001 (127) ELT 647 (SC) and Suburban Engg. Works – 1991 (56) ELT 470 (T).
- The SCN does not propose to charge interest, the question of ordering interest would not arise.
- When the Tribunal in its Order dated 08.06.2009 has held that penalty is not imposable, the department's appeal proposing imposition of penalty is not sustainable.
- The impugned order confirming the demand of Rs.47,09,342/- pertaining to 39 AR3As is not sustainable.

19. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the cross-objections filed by the respondent and the materials available on records. The issue before me for decision is whether the impugned order passed by the adjudicating authority dropping the demand of central excise duty amounting to Rs.2,93,68,181/-, in the facts and circumstances of the case, is legal and proper. The demand pertains to the period from July, 1991 to October, 1996.

20. It is observed that the impugned order has been passed in the remand proceedings ordered vide OIA No. AHM-EXCUS-001-APP-065-2019-20 dated 18.11.2019 passed by the Commissioner (Appeals), Ahmedabad. The relevant part of the said OIA is reproduced below :

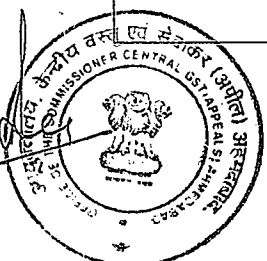
“7.3.1 Looking into the submissions made by the appellant, I feel that the demand of Rs.13,43,603/- in 7 AR3As is not sustainable as they had paid the amount and Rs.44,88,386/- in 37 AR3As is also not sustainable as they submitted original/Xerox copies of AR3As duly signed by the Superintendent/Inspectors. I find that in earlier round, the Commissioner (Appeals) had accepted the Xerox copies AR3As, duly certified by the jurisdictional central excise officer as proof of re-warehousing and the acceptance of such Xerox copies was not agitated by the department. In the circumstances, the adjudicating authority should have accepted such documents as proof of re-warehousing. However, I find that these facts were not considered by the adjudicating authority though the appellant has furnished all such details. Therefore, this issue is also required to be re-examined by the adjudicating authority on the basis of documents furnished by the appellant and if the submissions made by the appellant in respect of 7 and 37 AR3As supra is found in order, the appellant is eligible for relief. In view of above, I remand the matter to the adjudicating authority. In respect of 438 AR3As, I find that as per appellant's submission they had submitted original/Xerox copies in 436



AR3As, duly signed by the consignee and collateral evidences in 2 AR3As. I find that earlier also, the Commissioner (Appeals) has remanded the case in respect of AR3As which were only signed by the consignee and not counter signed by the department officer in charge. I find that as per provision of Rule 156 A of erstwhile CER 1944, the Officer-in-charge of the warehouse of destination shall countersign the application received by him and send it to the Officer-in-charge of the factory or warehouse of removal and provisions of 156 B of rule ibid, If the application endorsed with the re-warehousing certificate is not received by the Officer-in-charge of the factory or warehouse of removal, the consignor shall, on demand by the proper officer, pay the duty leviable on such goods. Therefore, the appellant is bound to furnish AR3As in original or Xerox copies duly certified by the officer in charge. In this matter, I find that the appellant has furnished copies of AR3As duly signed by the consignee only which is not acceptable as per provisions of above referred rule. Hence, the duty involved in respect of goods removed on such AR3A is recoverable. **However, I give one more time/chance to the appellant to trace out the required AR3As in original or Xerox copies duly countersigned by the central excise officer in charge of consignee's end or any collateral evidence to the effect of goods re-warehoused at consignee's end and furnish before the adjudicating authority within one month on receipt of this order.** Therefore, I remand this matter also to the adjudicating authority to decide afresh on the basis of submissions made by the appellant. Needless to mention that opportunity of natural justice should be given to the appellant to present their case. Since the matter is very old, the entire process should be completed within two months from the date of this order." [Emphasis supplied]

20.1 It is observed that the adjudicating authority has, complying with the directions of the Commissioner (Appeals) in OIA dated 18.11.2019, accepted the collateral evidences submitted by the respondent which establishes re-warehousing of the goods without payment of duty. The adjudicating authority has, at Para 18 and 19 of the impugned order, detailed the different collateral evidences which were submitted by the respondents and which established receipt of the goods at the warehouse of the consignee. These collateral evidences, on the basis of which the adjudicating authority has satisfied himself that the goods cleared under AR3As by the respondent were re-warehoused, are summarized below :

No. of AR3As	Duty Involved (in Rs.)	Collateral Evidences on the basis of which re-warehousing was found to the satisfaction of the adjudicating authority and demand of central excise duty was dropped
1	80,793	AR3A signed by consignee and certified by Superintendent
1	27,369	Copy of AR3A signed by Inspector confirming receipt
1	1,92,712	Confirmation of re-warehousing by way of letter of Range Superintendent
1	18,896	Duty paid on full quantity
7	13,43,603	Duty paid on shortage quantity which confirms receipt
10	10,52,274	Re-warehousing confirmed vide letter dated 23.08.1995 by Range Superintendent
3	2,14,697	AR3As signed by Inspector as well as consignee confirming re-warehousing
4	5,00,190	AR3As signed by consignee and photocopies certified by Range Superintendent



20	27,21,225	Photocopies of AR3As signed by Inspector and certified by Range Superintendent
1	10,60,530	Entry No. and Date of re-warehousing shown in AR3A
2	6,32,787	Duty paid on shortage quantity which confirms receipt
8	53,94,875	Duty paid on shortage quantity which confirms receipt
421	1,61,28,230	Collateral evidences viz. Entry No. and Date of warehousing register found on copies of AR3As

21. The appellant department has filed the present appeal primarily on the grounds that the respondent was bound to submit copies of the AR3As, duly certified by the officer in charge of the consignee, in terms of Rule 156A and 156B of the erstwhile Central Excise Rules, 1944. At this juncture, it would be very pertinent to refer to the judgment of the Hon'ble Tribunal, Ahmedabad passed in the first round of litigation. The Hon'ble Tribunal had in their Order dated 08.06.2009, held at Para 4 that :

"4. We have considered the submissions made by both sides. The only issue to be decided is that whether absence of entry number in AR3A form submitted by the appellant, is a substantive requirement or not and whether the Commissioner (Appeals) was fair in confirming the demand on this ground alone, amounting to more than Rs. 2 crores. Learned advocate has submitted that the appellant is a public sector undertaking and during the relevant period, it was wholly owned by Govt. of India and receiving warehouses were also owned by oil marketing companies who were also owned wholly by Govt. of India. Therefore, they have no intention to evade duty. We also take note of the submission that AR3A forms have all other details except entry number and wherever there was short receipt of petroleum product at the receiving warehouse, such short receipts were recorded and consequent duty liability was discharged by the appellant which shows their *bona fide* as regards procedure to be followed. However, we are unable to accept the submission of the appellant that entry number is not at all a substantive requirement and without entry number the AR3A submitted by them should have been accepted. In the absence of any verification by the departmental officers and requirement of counter-signing of AR3A form as per rule, full confidence has been reposed on the appellant and therefore procedural requirement assumes greater importance. Further, entry number links register maintained by the consignee warehouse with the actual quantity received and details of transportation. It is quite possible that on the same day, several consignments may be received and therefore it may not be possible for verification to be conducted if entry number is not available. Manipulation at the level of the officers even though not on the part of the appellant-company cannot be ruled out. Therefore, in the interest of the company as well as Revenue, entry numbers must have been filled by the appellant. At this juncture, learned advocate offers that they would be able to show the receipt of these petroleum products to the satisfaction of the lower authorities by producing collateral evidence or by making available relevant entry number in respect of re-warehousing certificates produced by them. **We find that this is a very fair offer and the appellants should be given another opportunity to submit details of entry number against which the goods were received in respect of consignment in dispute or produce collateral evidence to show that the quantities shown to have been received as per re-warehousing certificate have actually been received.** For this purpose, we remand the matter to the original adjudicating authority. The appellants shall cooperate with the original adjudicating authority and produce all the relevant evidence or entry number to the original adjudicating authority within three months from the date of receipt of this order. If the appellants fail to produce



collateral evidence or entry number to the original adjudicating authority within three months from the date of receipt of this order or within such extended period as original adjudicating authority or Commissioner may allow, we make it clear that the duty involved shall be required to be paid and the order of the Commissioner (Appeals) shall stand. **This principle would apply if the appellants are able to show evidence or entry number only in respect of part of the number of consignments and in such a case, the appellants shall be liable to pay the duty in respect of consignments for which they are not in a position to produce details of entry number or collateral evidence.** Since the case relates to warehouses of petroleum products and as submitted by the appellant, goods are dispatched to re-warehousing all over the country not only belonging to the IOCL but also other oil marketing companies, we find that the penalty need not be imposed on the appellant. Accordingly, penalty of Rs. 50,000/- imposed upon the appellant is set aside." [Emphasis supplied]

21.1 It is observed that the above order of the Hon'ble Tribunal was not contested by the appellant department by way of appeal to any higher appellate authority. Therefore, the said order of the Hon'ble Tribunal has attained finality. Further, the Commissioner (Appeals), Ahmedabad too had in OIA No. AHM-EXCUS-001-APP-065-2019-20 dated 18.11.2019 held at Para 7.3.1 that "*However, I give one more time/chance to the appellant to trace out the required AR3As in original or Xerox copies duly countersigned by the central excise officer in charge of consignee's end or any collateral evidence to the effect of goods re-warehoused at consignee's end and furnish before the adjudicating authority within one month on receipt of this order*". It is seen that the said OIA dated 18.11.2019 passed by the Commissioner (Appeals), Ahmedabad has been accepted by the appellant department. Therefore, without challenging either the Order dated 08.06.2009 of the Hon'ble Tribunal or the OIA dated 18.11.2019 of the Commissioner (Appeals), Ahmedabad, the appellant department cannot take the plea that collateral evidences establishing re-warehousing is not acceptable and that establishing re-warehousing of the goods has to be in terms of Rule 156A and 156B of the erstwhile Central Excise Rules, 1944.

21.2 It is observed that wherever the AR3As bearing endorsement of re-warehousing by the proper officer at the consignee's end were not available with them, the respondent had submitted other collateral evidences in the form of photocopies of AR3As with Entry No. and Date of warehousing, which was duly certified by the Range Superintendent, letter of the Range Superintendent certifying receipt of the goods at the consignee's end and payment of duty where there was short receipt of goods at the consignee's



end. While these evidences may not be strictly in terms of Rule 156A and 156B of the erstwhile Central Excise Rules, 1944, the adjudicating authority was bound to accept them, if found satisfactory, as evidence of the goods being re-warehoused at the consignee's end, in terms of the directions of the Hon'ble Tribunal vide Order dated 08.06.2009 and the OIA dated 18.11.2019 of the Commissioner (Appeals), Ahmedabad. From the findings recorded in the impugned order, it is evident that the adjudicating authority was satisfied that the goods cleared by the respondent under AR3As were warehoused at the consignee's end. Accordingly, the adjudicating authority dropped the demand of central excise duty amounting to Rs.2,93,68,181/-.

21.3 It is further observed that appellant department has not come forward with any grounds faulting the findings of the adjudicating authority or faulting the collateral evidences submitted by the respondent establishing re-warehousing of the goods at the consignee's end. The adjudicating authority has accepted the collateral evidences establishing re-warehousing of the goods, in terms of the directions of the Hon'ble Tribunal and the OIA dated 18.11.2019 passed by the Commissioner (Appeals), Ahmedabad. Therefore, the appellant department, without having challenged these appellate order, cannot seek to reject the collateral evidences submitted by the respondent and seek to enforce compliance of the provisions of Rule 156A and 156B of the erstwhile Central Excise Rules, 1944. In view thereof, I am of the considered view that the appeal filed by the appellant department is devoid of merit. Accordingly, I uphold the impugned order and reject the appeal filed by the appellant department.

22. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed of in above terms.

Akhilesh Kumar
Akhilesh Kumar
Commissioner (Appeals)

Date: 13.03.2023.

Attested:

(N.Suryanarayanan. Iyer)
(N.Suryanarayanan. Iyer)
Assistant Commissioner (In situ),



CGST Appeals, Ahmedabad.

BY RPAD / SPEED POST

To

The Deputy Commissioner,
CGST, Division- IV,
Commissionerate : Ahmedabad South.

Appellant

M/s. Indian Oil Corporation Limited,
Sabarmati Terminal, Near 'D' Cabin,
Sabarmati, Ahmedabad-380 019

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South.
(for uploading the OIA)
- ✓ 4. Guard File.
5. P.A. File.

