FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 06/01/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/70011-70015/2017-CU[DB] dated 05/01/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the Customs Act, 1962.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	C/79/2010	**INDIAN OIL CORPORATION LTD.** MATHURA REFINERY, MATHURA (U.P.)
2	C/80/2010	**INDIAN OIL CORPORATION LTD.** MATHURA REFINERY, MATHURA (U.P.)
3	C/81/2010	**INDIAN OIL CORPORATION LTD.** MATHURA REFINERY, MATHURA (U.P.)
4	C/586/2010	**INDIAN OIL CORPORATION LTD.,** MATHURA REFINERY, MATHURA (U.P.)
5	C/587/2010	**INDIAN OIL CORPORATION LTD.,** MATHURA REFINERY, MATHURA (U.P.)
		Name and Address of Respondent
6		-C.C.E. LUCKNOW 7-A, Ashok Marg, Lucknow.
7		-C.C. LUCKNOW Hall No. 3,5th and 11th floor, Kendriya Bhawan, Sector -H, Aliganh, Lucknow 226024.

8 -C.C. LUCKNOW
Hall No. 3,5th and 11th floor,
Kendriya Bhawan, Sector -H,
Aliganh, Lucknow 226024.

9 -C.C.E. LUCKNOW
7-A, Ashok Marg, Lucknow.

10 -C.C. LUCKNOW
Hall No. 3,5th and 11th floor,
Kendriya Bhawan, Sector -H,
Aliganh, Lucknow 226024.

Other Appellants and Respondents as per Annexure

Copy To

11 Advocate(s) / Consultant(s):

12 Bar Association, CESTAT, Allahabad

13 Director Publications, Customs, Excise. I.P. Estate, Delhi

14 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

15 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

16 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

17 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

18 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

19 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

20 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

21 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

22 C.D.R. 23 Office Copy ~~24 Guard File~~

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Appeal Nos.C/79-81, 586 & 587/2010-EX[DB]

Arising out of Order-in-Appeal Nos.13-15-CUS/LKO/2009 dated 12.11.2009 and 18-19-CUS/LKO/2010 dated 11.08.2010 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow.

M/s Indian Oil Corporation Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Lucknow

...RESPONDENT (S)

APPEARANCE:

Shri Chandan Kumar, Chief Manager (Finance) & Shri G.K. Seth, Senior Manager (Finance), Representative for the Appellant (s)
Shri Rajeev Ranjan, Joint Commr.(AR) for the Department (s)

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 08.12.2016

FINAL ORDER NO.- 70011-70015/2017

Per Mr. Anil G. Shakkarwar:

The above stated five appeals are involving the same issue and are related to the same appellant. Therefore, they are taken together for decision. The details in respect of impugned Order-in-Appeal and period involved are as given below:-

S.N	APPEAL NO.	OIO NO.	OIA NO.	PERIOD	AMOUNT OF REFUND (Rs.)
1.	C/586/2010	101-104/Refund/2009 dt. 16.09.2009	18-19/Cus/LKO/2010 Dt. 11.08.2010	1999-2002	3,51,08,801/-
2.	C/587/2010	117-		2001-2001	50,31,737/-

		118/Refund /2009 dt. 30.09.2009			
3.	C/79/2010	05-13/Refund/09 dt. 28.01.2009	13-15/Cus/LKO/2009Dt. 12.11.2009	1998-1999	8,26,56,100/-
4.	C/80/2010	32-38/Refund/09 dt. 31.03.2009		1999-2004	2,50,59,326/-
5.	C/81/2010	47-51/Refund/09 dt. 12.05.2009		2001-2003	16,57,37,528 /-

2. The brief facts of the case are that the appellants are importers of Petroleum Crude Oil, which is used for manufacture of different petroleum products. The appellants are registered with Central Excise and also having Custom Bonded Warehouse for warehousing of petroleum crude oil. The imported petroleum Crude Oil was warehoused at Vadinar and was further re-warehoused at their refinery at Mathura in Bonded storage Tanks as per Section 67 of the Customs Act, 1962. The appellants thereafter, cleared said petroleum crude Oil for home consumption on payment of customs duty as per Section 68 of Customs Act, 1962. The assessment of Customs duty on warehoused crude petroleum at Vadinar was resorted to provisional assessment as per Section 18 of Customs Act, 1962. Consequently, ex-bond Bills of Entry were also assessed

provisionally at Mathura on account of pending finalization of said provisional assessment at Vadinar. Ex-bond Bills of Entry were also finalized at Mathura on such finalization of assessment of crude petroleum at Mathura. It was found that the customs duty paid provisionally at the time of clearance was more as compared to the assessment finalized subsequently. Therefore, there arose situations where excess duty collected was to be refunded to the appellants. The amount of refund involved in each case is already stated at para one above. In all 5 cases, Original Authority has held that refund was not admissible to the appellants, since they could not establish that the incidents of excess paid Customs duty was not passed on to the customers and as a result, the refund was hit by bar on unjust enrichment. Therefore, the Original Authority in all the five cases rejected appellants' claim of refund. The appellants preferred appeal before Ld. Commissioner (Appeals). The Ld. Commissioner (Appeals) decided such appeals through Orders-in-Appeal, details of which are stated as Para 1 above. The Ld. Commissioner (Appeals) did not interfere with the Orders in Original and reject the appeals. Aggrieved by said Orders-in-Appeal dated 11.08.2010 & 12.11.2009, the appellant is before this Tribunal.

3. The ground of appeal is that the bar of unjust enrichment is not applicable when the prices are fixed by Government and not based on the cost of manufacture of the goods.

4. Heard Shri Chandan Kumar, Chief Manager (Finance) and Shri G.K. Seth, Senior Manager (Finance). They have submitted that they had filed application for refund of claim under Section 27 of Customs Act, 1962. Actually, as per provisions of Section 18, there was no need to file application for refund because the provisions of Section 18 of Customs Act, 1962 have provided for consequential refund suo moto by the Officer-~~assessee, on~~ assessing finalization of provisional assessment and since such a refund order was not passed on finalization, they were compelled to file application for refund under Section 27 of Customs Act, 1962. They insisted that in their case, provisions of Clause (a) of Sub-Section (2) of Section 18 of Customs Act, 1962 is applicable which provides for refund of excess duty paid by importer on finalization of assessment of the goods. They have further contended that Sub-Section 3, 4 & 5 of Section 18 of Customs Act, 1962 were inserted with effect from 13.07.2006 and all the provisional assessments in their case were related to the period from 1998 to 2004 and that therefore, Sub-Sections 3, 4 & 5 of Section 18 of Customs Act, 1962 were not applicable in their case. They further relied on ruling by Hon'ble High Court of Delhi in their own case i.e. in the case of Commissioner of Customs Vs. Indian Oil Corporation reported at 2012 (282) ELT 368 (Del.). They further argued that the Hon'ble High Court has ruled that when an amount becomes refundable after a final order is passed, the same has to be refunded immediately and for such

purpose, the assessee is not required to move an application under Section 27 of Customs Act, 1962.

6. Heard the Ld. DR for the Department, who has supported the impugned Orders-in-Appeal.

7. Having considered the rival contentions and on perusal of record, we find that there is great force in the arguments put forth by the learned representatives of the assessee. We also find from the ruling referred above by Hon'ble High Court of Delhi that as far as Section 18 of the Customs Act is concerned when an amount becomes refundable after a final order is passed, the same has to be refunded immediately and for such purpose, the assessee is not required to move an application under Section 27 of the Customs Act, 1962 since the same is not applicable in such cases. The Hon'ble High Court has further held that for the period before 13.07.2006, provisions of Sub-Sections 3, 4 & 5 of said Section 18 shall not be applicable. We find that Sub-Section 2 of Section 27 deals with provisions of unjust enrichment. In view of the ruling by Hon'ble High Court, we hold that in the present five appeals, the provisions of 'unjust enrichment' were not applicable. Therefore, we allow all the five appeals. The appellants shall be entitled for consequential relief as per Law.

(Dictated & pronounced in the open Court)

Sd/-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

प्रमाणित प्रति / Certified True Copy
17.1.17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001