

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Bench – SMB

Court – I

Appeal No. E/31052-31054/2017

(Arising out of Order-in-Appeal No. HYD-EXCUS-001-APP-040, 041
& 042-17-18-ST dated 19.06.2017 passed by Commissioner of
Customs & Central Excise (Appeals), Hyderabad)

**Commissioner of Central Tax,
Hyderabad- GST**

.....Appellant(s)

Vs.

ICRISAT

.....Respondent(s)

Appearance

Shri Arun Kumar, Deputy Commissioner (AR) for the Appellant.

Shri S. Thirumalai, Advocate for the Respondent.

Coram:

Hon'ble Mr. M. V. Ravindran., Member (Judicial)

Date of hearing: 19/04/2018

Date of decision: 19/04/2018

FINAL ORDER No. A/30485-30487/2018

[Order per: M. V. Ravindran.]

These three appeals are directed against Orders-in-Appeal No. HYD-EXCUS-001-APP-040, 041 & 042-17-18-ST dated 19.06.2017.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that the issue is regarding refund of Central Excise duty paid on various petroleum products which are consumed by the respondent whether it can be refunded or otherwise.

4. Respondent is an organization recognized as an international organization by virtue of Section 3 of the United Nations Act and also extended benefit of Notification No. 108/95-CE dated 28.08.1995. In pursuance to conditions of such Notification, and by virtue of being International organization, respondent during the period June, 2015 to October, 2015 procured duty paid petroleum products and filed refund claims (5 no.s) of Central Excise duty for such procurements. Show cause notices were issued to respondent directing them as to why refund claim should not be rejected; the appellant agitated the matter on merits before the Adjudicating Authority. The Adjudicating Authority after following due process of law, relying the Board Circular F No. 261/27/3/2006-CX8 dated 14.08.2008 dropped the proceedings initiated by the show cause notice, sanctioned all the refunds. Revenue Authorities preferred appeals before the First Appellate Authority. The First Appellate Authority in the impugned order after considering the issue holistically upheld the Order-in-Original and rejected the Department's appeals by the reasoned findings, which I reproduce.

6. I have considered the submissions made in the departmental application and those made by the respondent in writing as well as those made during the personal hearing held in the matter. The issue for decision is whether the respondent being an international organization is entitled to

exemption from payment of Central Excise duty under Notification No. 108/95-C.E on HSD obtained and to the refund of duty of excise paid on such HSD used by them since they had paid duty on them at the time of clearance from IOCL. As regards facts it is not in dispute that ICRISAT is an international organization notified by the Government of India in terms of Section 3 of the United Nations (Privileges and Immunities) Act, 1947 and that they are entitled to exemption in terms of Notification No. 108/95-C.E. The exemption granted under the said Notification No. 108/95-C.E is with respect to all goods falling under the schedule of Central Excise Tariff Act when supplied to the United Nations or to an international organization for their official use or supplied to the projects financed by the United Nations or the said international organization as approved by the Government of India. It has been submitted in appeal by the respondent that the activities undertaken by them includes agricultural and biotech research activities including operation and movement of agricultural implements and machinery used for field research and that the fuel obtained in terms of the exemption granted under Notification No. 108/95-C.E has been used primarily to maintain global gene bank facility and modern bio-tech laboratory which are technical requirements in the research activities being carried on by them. They are mandated under law to do such activities. It has further been submitted that fuel is being used also for transport of research materials and research related activities apart from running the official vehicles maintained by them. Therefore, it is evident that HSD consumed by the respondent is primarily to be regarded as raw material/consumable for the business carried on by the respondent in the field of research and related activities mandated under its incorporation and not solely for use as fuel in the motor vehicles maintained by them. Keeping in view the intention of the Notification which is to extend the benefit of exemption to goods supplied to international organizations, I am of the considered view that the exemption provided has to be made effective by way of the refund mechanism applicable to such organization because of the administrative difficulty encountered in extending the exemption at the original stage at IOCL as has been recognised in the CBEC communication F.No. 261/27/2/2006-CX8 dated 14.08.2008. In this connection, it is observed that in terms of the CBEC circulars F.No. III/7/76-CX3 dt. 20.4.1976 and F. No. 111/5/79-CX3 dt. 19.10.1979 a restriction in terms of quantity and the amount of duty eligible to be refunded on petroleum products has been sought to be enforced when such fuel is used in official vehicles by UN and its agencies and diplomatic/consular missions etc. The departmental appeals rely on a Delhi Central Excise Collectorate Public Notice containing the said CBEC instruction dated 20.04.1976. Going by the title of the said Public Notice whose current validity has not been shown to be inapplicable by the respondent in the instant proceedings, I am of the considered view, as has been pointed out in the departmental appeal that the fuel consumed exclusively for the vehicles used by the UN/international organizations is required to be restricted by the quantity limit per vehicle per month specified therein. The respondent has sought to submit that the said circulars would apply only to diplomatic missions and that they being an international organization cannot be considered as a diplomatic mission. However, it is my considered view that the circular F.No. III/7/76-CX3 dt. 20.04.1976 relied upon in the departmental application seeking to restrict the quantity of petroleum products to 350 litres per month would be applicable to the respondent in view of the fact that the said circular as presented in the Public Notice issued by Delhi Central Excise Collectorate available on record refers in its title to the UN and its agencies. The respondent being a notified agency under Section 3 of the United Nations (Privileges and Immunities) Act, 1947 is eligible to the exemption under Notification No. 108/95-C.E but restricted by the instructions issued by CBEC on petrol/HSD etc. Such restriction of quantity of 350 per month per vehicle would, however, apply only to the official vehicles of the respondent as intended in the said circular but not other vehicles and uses, in view of my decision above on fuel consumed by respondent in research work etc. At the same time, it is observed from my reading of the CBEC circular F.No. 111/5/79-CX3 dt.

19.10.1979 relied upon in the departmental application that the restriction of the amount of refund admissible per litre per vehicle in a month is only with reference to the fuel supplied to diplomatic missions etc., which does not include UN or its agencies within its ambit. As has been submitted by the respondent, I find that the diplomatic missions recognized under the Diplomatic Relations (Vienna Convention) Act, 1972 are different from the international organization recognized under United Nations (Privileges and Immunities) Act, 1947 to which category the respondent falls. It appears that CBEC in circular F.No. 111/5/79-CX3 dt. 19.10.1979 has not included international organization for such restriction on quantity. Therefore, the restriction of the amount of refund admissible on fuel on per litre basis would not apply to the instant case. It is also noted that while granting adhoc exemption order No. 137/01/2011-CX issued in F.No. 101/14/2010-CX3 dated 27.04.2011, CBEC has held that since ICRISAT has been granted privileges under United Nations (Privileges and Immunities) Act, 1947 they are entitled to exemption from payment of excise duties on various items for official use in terms of the international conventions.

7. In view of the above discussion, I am of the considered view that the respondent is entitled to exemption under Notification No. 108/95-C.E and consequently for refund of Central Excise duty paid on the fuel used for undertaking research work and other allied activities. However, as regards the quantity of fuel consumed by the respondent with reference to running and maintenance of official vehicles used by them they shall be entitled to refund of the Central Excise duty paid only on 350 litres per month per such vehicle.

It can be seen from the above reproduced findings of the First Appellate Authority, that he has placed reliance on Circular F. No.111/5/79-CX3 dated 19.10.1979 for granting relief to the respondent before him. I find that, though First Appellate Authority did not refer to Board Circular dated 14.08.2008 but to arrive at a conclusion was considered may be unquoted in the final order. I find that the said Circular dated 14.08.2008, will apply in full force and specifically states how to deal issue refunds claimed by respondent herein i.e. ICRISAT. I reproduce the relevant paragraphs.

2. In para 4 of this circular, it was clarified that the exemptions to specified categories of end-users would continue to be in force. It was indicated therein that difficulties/problems were likely to arise in respect of clearances which are not made directly to such end-users. It was directed that such difficulties should be examined and intimated to the Board for providing mechanism for refund, if necessary. It has now been reported that there is difficulty in extending the benefit of Notification No. 108/95-Central Excise dated 28.08.1995 (as amended) to Petroleum, Oil and Lubricants which are not supplied to ICRISAT directly by the manufacturers but through

their depots. It has been reported that oil companies cannot supply the goods from refinery to ICRISAT as these are transferred through a pipeline and not in a tanker. Therefore benefit of Notification cannot be extended while clearing goods from factory. The provisions of refund for goods supplied to diplomatic mission has also been referred. Accordingly, a proposal has been received by the Board from Chief Commissioner of Central Excise, Visakhapatnam for providing a refund mechanism in this case.

3. The matter has been examined. As per Section 11B (1) a refund claim is to be submitted in the prescribed format and shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may wish to establish that the amount of duty of excise in relation to which such refund is claimed was collected from, or paid by him and the incidence of such duty had not been passed on by him to any other person. If the duty is determined to be refundable pursuant to a claim made by a Buyer under Section 11 B, proviso (e) to Section 11 B of the Central Excise Act, 1944, mandates that a refund will be paid to the Buyer if the duty of excise has been borne by him and he has not passed on the incidence of such duty to any other person. In order to facilitate filing of refund claims by ICRISAT for getting relief of duty paid [under Notification 108/95-CE dated 28.08.1995, as amended] ICRISAT may file the refund claim with the Assistant Commissioner/Deputy Commissioner of Central Excise under whose jurisdiction the concerned office of ICRISAT making the claim is located, ICRISAT should also issue a certificate that the goods for which the refund claim is made are meant for ICRISAT official use. As for submission of documents to show that the incidence of duty has been borne by ICRISAT, the invoice issued by the sale outlet of the oil company should contain the particulars of the amount representing duty and it should be endorsed on the invoice that the goods are sold to ICRISAT from the duty paid stock.

It can be seen from the above reproduced Board Circular, ICRISAT has to satisfy some conditions for refund Central Excise duty paid on petroleum products procured by them. It is not disputed in these appeals ICRISAT had complied with the conditions in the refund claims filed for as per Board Circular dated 14.08.2008, I find both the lower authorities were correct coming to a conclusion with the respondent herein is eligible for the refund of an amount paid towards Central Excise duty on the fuel consumed by them during the relevant period in question. In my view concurrent findings of facts need to be upheld and I do so.

5. In view of the foregoing, the appeals filed by the Revenue are devoid of merits and are rejected, the impugned order is correct and legal and does not require any interference and appeals stands rejected. Cross objections filed by the respondent being support of the Order-in-Appeal is also disposed of.

(Order dictated and pronounced in open court)

(M. V. RAVINDRAN)
MEMBER(JUDICIAL)

Lakshmi....