Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Customs Appeal No.12122 of 2018

(Arising out of OIA-JMN-CUSTM-000-APP-06-08-18-19 dated 04/05/2018 passed by Commissioner of CUSTOMS-JAMNAGAR (PREV))

Nayara Energy Ltd **………Appellant**
(Formerly Known As Essar Oil Ltd.), Pb No. 24, Head Post Office, Khambhalia, Devbhumi Dwarka, Gujarat

VERSUS

C.C.-Jamnagar(prev) **………Respondent**
Sharda House...Bedi Bandar Road,
Opp. Panchavati, Jamnagar
Gujarat

WITH

Customs Appeal No.12123 of 2018

(Arising out of OIA-JMN-CUSTM-000-APP-06-08-18-19 dated 04/05/2018 passed by Commissioner of CUSTOMS-AHMEDABAD)

Nayara Energy Ltd **………Appellant**
(Formerly Known As Essar Oil Ltd.), Pb No. 24, Head Post Office, Khambhalia, Devbhumi Dwarka, Gujarat

VERSUS

C.C.-Jamnagar(prev) **………Respondent**
Sharda House...Bedi Bandar Road,
Opp. Panchavati, Jamnagar
Gujarat

AND

Customs Appeal No.12124 of 2018

(Arising out of OIA-JMN-CUSTM-000-APP-06-08-18-19 dated 04/05/2018 passed by Commissioner of CUSTOMS-JAMNAGAR (PREV))

Nayara Energy Ltd **………Appellant**
(Formerly Known As Essar Oil Ltd.), Pb No. 24, Head Post Office, Khambhalia, Devbhumi Dwarka, Gujarat

VERSUS

C.C.-Jamnagar(prev) **………Respondent**
Sharda House...Bedi Bandar Road,
Opp. Panchavati, Jamnagar
Gujarat

APPEARANCE:
Shri. Vishal Agarwal,Shri Vipin Jain, Shri Roshil Nichani and Shri Abhishek Kapadia, Advocates for the Appellant
Shri. Ghanshyam Soni, Joint Commissioner(AR)& Shri S.N Gohil, Superintendent (AR)for the Respondent

CORAM: **HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR**
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 12282-12284 /2021

DATE OF HEARING: 18.03.2021
DATE OF DECISION: 16.07.2021

RAMESH NAIR

In appeal No C/12124/2018 the issue involved is that whether the appellant was entitled for refund of Rs 1,99,97,500. Learned Commissioner (Appeals) in the impugned order allowed the revenue's appeal holding that the appellant was required to pay 10% separately over and above 7.5% towards pre-deposit in terms of Section 129E of the Customs Act. Accordingly, allowed the revenue's appeal setting aside the order of original authority whereby the refund was allowed. The appellant filed Appeals no C/12122/2018 and C/12123/2018 against the impugned order passed by the first appellate authority wherein the said authority has upheld the appropriation of the refund of Rs 1,99,97,500 sanctioned to the appellant against the sanctioned drawback claims covered in Order-in–Originals dated 17.04.2007

2. Shri Vishal Agarwal, Learned Counsel along with Shri Vipin Jain, Shri Roshil Nichani and Shri Abhishek Kapadia, Learned Advocates appeared on behalf of the appellants. Shri Vishal Agarwal submits that the issue is that whether the appellant is required to make a pre- deposit of 7.5% + 10% at the second appeal stage which was settled as per the judgment of Hon'ble Delhi High court in the case of SANTANI SALES ORGANIZATION- 2018-TIOL-1058-HC-DEL-ST. In view of the above judgment the appellant was rightly entitled for the refund of Rs 1,99,97,500. As regard Appeal No C/12122/2018 and C/12123/2018, he submits that since the appellant is legally entitled for the refund of Rs 1,99,97,500 the adjustment of the same is illegal.

3. Shri Ghanshyam Soni, Learned Joint Commissioner (Authorized Representative) and Shri S.N Gohil, Learned Superintendent (Authorized

Representative) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have carefully considered the submissions made by both the sides and perused the records. We find that in the appeal no C/12124/2018 the issue is whether the appellant is required to pay total 10% i.e. 7.5% + 2.5% at the stage of filing appeal before CESTAT has been settled by the Hon'ble Delhi High Court in the case of Santani Sales Organization. The relevant portion of the order is reproduced below:

> *"24. Accordingly, we would allow the present writ petition and set aside the order and direction of the Tribunal that the petitioner must deposit additional 10% of the duty and penalty in dispute for the second appeal to be heard and adjudicated. We would also quash the circular dated 27th April, 2017 issued by the Tribunal. It is directed that the petitioner and others on filing second appeal before the Tribunal are required to deposit 10% of the amount of duty/ penalty as confirmed by the first appellate authority inclusive of 7.5% pre-deposit made for the first appeal. 10% would not be in addition to and over and above 7.5% of pre deposit made for the first appeal. However, contention that Section 35F of the C.E. Act does not apply to service tax appeals and therefore no pre-deposit is required to be made is rejected. In the facts of the case there would be no order as to costs."*

4.1 In view of the above judgment of Delhi High Court and appeal before the CESTAT in the case of second appeal before CESTAT, the appellant is required to pay total 10% i.e. 7.5% at first appellate stage and remaining 2.5% at the stage of appeal before the CESTAT. Therefore, the view taken by the Learned Commissioner (Appeals) that appellant at tribunal stage is required to pay total 17.5% i.e. 7.5% at first appellate stage and 10% at tribunal stage was held to be illegal. Therefore, the impugned order is not sustainable hence the same is modified. Appeal No C/12124/2018 is allowed by way of remand for passing a fresh order in the light of above observation.

4.2. As regard Appeal No C/12122/2018 and C/12123/2018 we find that since in these appeals the issue involved is that whether adjustment of sanctioned refund of Rs 1,99,97,500 against the sanction of drawback is correct or otherwise.

4.3. From the record it appears that the said amount of 1,99,97,500 was sanctioned and disbursed by the Original Adjudicating Authority Vide OIO No 378/DC/RD/2016-2017dated 03.04.2017.However, since the department filed an appeal by reviewing order and arrangement was reached between the deputy commissioner and the appellant. The appellant vide letter dated 17.04.2017 submitted as follows:

EXHIBIT–'J'
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ESSAR
OIL & GAS

Essar Oil Limited
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Dist. Dev Bhumi Dwarka
Gujarat -361305
India

Corporate Identity Number :
U11100GJ1989PLC032116

T +91 2833 661 444
F +91 2833 662 929
E eolrefinery@essar.com
www.essaroil.co.in

17th April, 2017

The Deputy Commissioner of Customs,
Jamnagar Division,
Jamnagar.

Sir,

<u>Sub: Refund Claim of Rs.1,99,97,500/-</u>

This is with reference to the O-I-O No. 378/DC/RD/2016-17 dated 03.04.2017 passed by your good-self and our subsequent discussions, we would like to inform you that we are in the process of approaching CESTAT for getting the clarification regarding the amount appropriated as pre-deposit at Hon'ble CESTAT while accepting our Appeal against O-I-A No. JMN-CUSTM-000-APP-074/075-15-16 dated 08.09.2015 passed by the Hon'ble Commissioner of Customs (Appeals), Ahmedabad. However, this may take some more time.

In the meanwhile you may adjust the Refund amount to the tune of Rs.1,99,97,500/- sanctioned to us against our Drawback claims pending with your good office.

However, this is without prejudice to our rights & obligations on such refund claim.

Thanking you,

Yours Faithfully,
For Essar Oil Limited.

(Authorized Signatory)

17/4/17

Essar Oil Ltd.
Registered Office: Khambhaliya Post, P.O. Box No. 24, District Devbhumi Dwarka, Gujarat - 361305 T + 91 2833 661 444 F + 91 2833 662 929

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4.3 Consequently in the OIO No 01/DC/DBK/2017-2018 &02/DC/DBK/2017-2018 dated 17.04.2017 the amount of drawback sanctioned by the deputy commissioner was not disbursed fully but only partial disbursement was made and the balance was adjusted against the amount already disbursed, as a result of the sanctioned of refund of pre-deposit.

4.4. We find that the said adjustment is consequential to the above case in appeal no C/12124/2018. We find that since we have disposed of the said appeal the consequential effect needs to be given in case of C/12122/2018 and C/12123/2018.

5. Accordingly, the impugned orders in case of C/12122/2018 and C/12123/2018 are modified and the said appeals are allowed by way of remand to the Adjudicating Authority to decide a fresh only on the aspect of adjustment of sanctioned refund against drawback claim already sanctioned in the light of order passed in Appeal No C/12124/2018.

(Order pronounced in the open court on 16.07.2021)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

Geeta