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

REGIONAL BENCH- COURT NO. 3

Customs Misc. Application No. 10304 of 2023
(on behalf of Appellant)
in
Customs Appeal No. 13046 of 2018- DB

(Arising out of OA-VAD-EXCUS-001-APP-251-2018-19 dated 28.08.2018 passed by Commissioner (Appeals), GST & Central Excise, Vadodara)

M/s Indian Oil Corporation Ltd ....**Appellant**
Gujarat Refinery, PO-Jawaharnagar,
Vadodara-Gujarat-391320

VERSUS

Principal Commissioner of Customs ......**Respondent**
1st Floor, Customs House, Ashram Road,
Navrangpura, Ahmedabad-380009
(Erstwhile Commissioner, CGST & C. Ex., Vadodara-I)

WITH

(i) Customs Misc./10305/2023 in Customs Appeal No. 13049/2018 (Indian Oil Corporation Ltd); (ii) Customs Misc./10302/2023 in Customs Appeal No. 13050/2018 (Indian Oil Corporation Ltd); (iii) Customs Misc./10301/2023 in Customs Appeal No. 13052/2018 (Indian Oil Corporation Ltd); (vi) Customs Misc./10300/2023 in Customs Appeal No. 13053/2018 (Indian Oil Corporation Ltd); (v) Customs Misc./10303/2023 in Customs Appeal No. 13054/2018 (Indian Oil Corporation Ltd); (vi) Customs Appeal No. 10860/2020 (Indian Oil Corporation Ltd);

(Arising out of OA-VAD-EXCUS-001-APP-252-2018-19 dated 28.08.2018 passed by Commissioner (Appeals), GST & Central Excise, Vadodara)

(Arising out of OA-VAD-EXCUS-001-APP-250-2018-19 dated 28.08.2018 passed by Commissioner (Appeals), GST & Central Excise, Vadodara)

(Arising out of OA-VAD-EXCUS-001-APP-247-2018-19 dated 28.08.2018 passed by Commissioner (Appeals), GST & Central Excise, Vadodara)

(Arising out of OA-VAD-EXCUS-001-APP-249-2018-19 dated 28.08.2018 passed by Commissioner (Appeals), GST & Central Excise, Vadodara)

(Arising out of OA-VAD-EXCUS-001-APP-248-2018-19 dated 28.08.2018 passed by Commissioner (Appeals), GST & Central Excise, Vadodara)

(Arising out of OIO-VAD-EXCUS-001-COM-07-20-21 dated 19.08.2020 passed by Commissioner Central GST & Central Excise, Vadodara-I)

APPEARANCE:
Shri M.H. Patil with Shri Sidhanth Sriram, Advocates for the Appellant
Shri Tara Prakash, Authorised Representative for the Respondent

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

FINAL ORDER NO. 11019-11025 /2024

DATE OF HEARING: 01.05.2024
DATE OF DECISION: 01.05.2024

RAJU

These 7 appeals and 6 miscellaneous applications have been filed by IOCL against orders demanding Central Excise duty.

2. Learned counsel pointed out that the entire case is based on the liability to pay customs duty on movement of crude petroleum. The appellants are engaged in procuring crude petroleum from abroad as well as obtained the same from Bombay High Oil Fields. Both the imported oil as well as that obtained from Bombay High is first brought to Vadinar where it is stored in separate tanks. From Vadinar the crude oil is transferred to the refineries including the Indian Oil Corporation Refinery located near Vadodara. The imported crude oil is first put in bond under Section 58 of Customs Act, 1962 in Vadinar. The said crude is moved from Vadinar to the refinery under bond and the same is stored in the refinery under bond. Thereafter when the crude is utilized in the refinery ex-bond bill of entry is filed and duty is paid.

2.1 For carrying material from vadinar to various refineries, there are pipelines. The pipeline carrying imported crude as well crude obtained from Bombay High is common. As a result, there is some level of mixing happening between imported crude and the domestic crude. To ensure the smooth functioning and uniformity the CBEC prescribed detailed procedure in consultation with Directorate of General of Inspection. The said procedure prescribed the mechanism to keep records for the purpose of ensuring that proper duty is paid on imported crude and proper accountal of utilization and import and domestic crude is done.

2.2 Learned counsel pointed out that they were doing quarterly reconciliation of data as prescribed by the Directorate General of Inspection. The entire date is submitted to the Jurisdictional Authorities. The imported crude oil taken out of bond is quantified and duty paid by the filing Ex-bond Bill of Entries. He pointed out that sometimes it happens that there is custom duty payment on more quantity of crude as compared to that prescribed under the procedure designed by the Directorate General of Inspection. As a result, after considering the figures, the jurisdictional Assistant Commissioner would permit them to clear crude on Ex-bond basis at nil rate of duty as elsewhere they have already paid excess duty on some movement of goods. To show the scale of the dispute in total operation, he gave the following data:

Sr. No.	Particulars	Crude
01	Quantity in Dispute (MT)	53,878
02	Total quantity of crude imported as per into-bond Bills of Entry considering quantity in Bills of Lading (MT)	2,14,74,938.9
03	Aggregate Percentage	0.25%

He pointed out that in a large operation some errors can happen. He pointed out that during the entire disputed period such quantity works out to 0.25% of the total crude that was bonded.

2.3 He pointed out that earlier when the demand was confirmed the matter was agitated before Tribunal which vide order No. A/11881/2015 dated 31.12.2015 remanded the matter back to the adjudicating authority with following observations:

> *"2. After hearing both the sides and on perusal of the records, we find that the appellant requested the Department for correction of clerical error in the finalization of provisional assessment by order letter dated 22.02.2008 to the extent that a consignment of instead of indigenous crude oil had been treated as an imported crude oil instead of indigenous crude oil. The Learned Advocate fairly submits that they are not challenging the rate of duty and/or valuation of the goods in any manner and therefore, there is no reason to file appeal against the final assessment order. He further submits on the identical situation, the Tribunal in their own case Indian Oil Corporation*

Ltd vs. Commissioner of Central Excise 2015 (321) E.L.T. 292 allowed their appeal for correction of the Bill of Entry under the provisions of Section 154 of the Customs Act, 1962.

3. For the purpose of proper appreciation of the case, we reproduce the communication dated 08.09.2011 of the Assistant Commissioner Central Excise and Customs Division-IV, Vadodara-I as under:-

> *"Please refer to your letter F. No. JRF/A17/B.E.20/04-05 dated 13.07.2011 the above subject.*
>
> *On going through the relevant records it is noticed that Deputy Commissioner, Central Excise Customs, division-IV, Vadodara-l vide Order dated 22.02.2008 has finalized the assessment in respect of the Bills of Entry ir question after taking up into account all factors. As such, rectification as per your request can not be done under Section 154 of Customs Act, 1962 not being clerical mistake.*
>
> *In case you were aggrieved with the said Order, you had an option to file appeal against the said order. Your request for rectification of mistake can not be considered and stands disposed off."*

4. Section 154 of the Customs Act, 1962, reads as such

> *"Section 154, Correction of clerical errors, etc. - Clerical or arithmetical mistakes in any decision or order passed by the Central Government, the Board or any officer of customs under this Act, or errors arising therein from any accidental slip or omission may, at any time, be corrected by the Central Government, the Board or such officer of customs or the successor in office of such officer, as the case may be."*

5. On plain reading of Section 154 of the Act, it is clear that any decision or order passed by any officer of Customs under this Act, may be corrected by such officers of Customs, to the extent of clerical or arithmetical mistake arising out of the said order from any accidental slip or omission. In the present case, it is to be decided whether a consignment of Indigenous crude oil as contended by the appellant, by mistake was included in the final assessment order as imported crude oll. We find that the Adjudicating Authority had rejected their request without assigning any reason, only mere saying that the provisional assessment was finalized after taking up all factors,

6. The Commissioner (Appeals) observed that the final assessment of the Bills of Entry is an appealable *order, which cannot be rectified under Section 154 of the Act, 1962. In our opinion, Section 154 of the Act, is an independent provisions for correction or rectification of errors, in an order or decision passed by the officer, and the authority should have examined as to whether it is a mistake within the scope of Section 154 of the Act. In the present case, both authorities below had falled to consider the facts of the case in the light of the Section 154 of the Act. If the Adjudicating Authority fails to record between the materials on which certain conclusions are based and the actual conclusion, it is difficult to the appellate authority to determine facts. and law of the case. So, the impugned orders cannot be sustained and it is required to be examined by the lower authorities as to whether mistake as contended by the appellant is covered within the provisions of Section 154, and the case laws as submitted by the Learned Advocate. In view of the above discussions, we set-aside the Impugned order. The matter is remanded to the Adjudicating Authority to decide afresh after considering the submission of the appellants. Needless to say that, the Adjudicating Authority shall give proper opportunity of hearing before passing the order. The appeal is allowed by way of remand."*

In appeal No. C/13487-13488 and 13489/2013 vide Final Order No. A/10804-10806/2013 dated 10.12.2013, the matter was remanded with following observations:

"5. It is observed from Para 3 of the OIA dt 16.7.2013 that the appellant has raised several issues before the first appellate authority regarding methodology to be adopted for reconciliation. It was also brought to the knowledge of the first appellate authority that CESTAT vide order dt 3.1.2013 has remanded one such matter to the adjudicating authority for reconciliation. Even the original adjudicating authority also has not passed any reasoned order as to why reconciliation made by the appellant is not acceptable. In view of the Order No A/10161/WZB/AHD/2013 dt 3.1.2013 in appeal No. C/374/2011, on the same issue of the appellant these appeal's are required to be remanded back to the adjudicating authority for de novo consideration by setting aside OIA dt 26.7.2013.

5. Based on the above observations and without expressing any opinion on the merit side the OIA passed by the first appellate authority and remit the matter back to the adjudicating authority to reconsider the matter of reconciliation made by the appellant. Needless to say that the appellant will be heard by the Adjudicating Authority before deciding all the Issues in de novo adjudication."

In appeal No. C/374/2011, the Tribunal vide order No. A/11061/WZB/AHD/2013 dated 03.01.2013 remanded the matter with following observations:

> *"7.On careful consideration of the submissions made by both the sides, we find that the issue involved in this case is regarding the demand of duty on the ground that crude oil from the Bombay High was allowed to be cleared without payment of duty but actually the appellant had not been able to produce the correct reconciliation to show that they had cleared crude oil of interface from Bombay High. Both the lower authorities have finalised the bills of entries filed by the appellant and confirmed the differential customs duty in respect of the quantities which the appellant claims are eligible for clearance of without payment of duty as they are from interface of Bombay High. On mere perusal and statements produced by the ld. Counsel, we find that there seems to be some merits in their arguments. This statement, needs to be verified by the adjudicating authority and hence without going into the merits of the said statements as produced by the learned counsel, we find that the issue is to be decided on the factual matrix by the adjudicating authority after considering all the evidences that may be produced by the appellant before him at the time of hearing in denovo proceedings.*
>
> *8. Accordingly, in view of the foregoing, we set aside the impugned orders, without expressing any opinion on the merits of the case and keeping all the issues open, remit the matter back to the adjudicating authority to reconsider the issue afresh after following the principles of natural justice."*

3 Learned counsel produced certain data in respect of each appeal and tried to explain the data for the purpose of reconciliation. Learned Authorised Representative pointed out that the appellant have not provided the data for the purpose of reconciliation to the lower authorities in terms of Tribunal orders.

3.1 The original adjudicating authority in the remand proceedings vide order dated 28.02.2016 denied the benefit by observing as follows:

> "24. Assessee cannot approbate and reprobate. If assessee avails benefit of a permission/notification, he has to necessarily comply with the conditions of the permission/notification. Here I rely on the case reported in (2008)229 ELT 3(SC) in the matter of CC v. Indian Rayon. Eligibility clause in relation to permission granted by department to the assessee must be given a strict meaning. **Reconciliation cannot be made without proper documentary evidence showing the cause and effect relation**

> **<u>so I cannot grant the assessee any benefit as being</u>** cinimed by them in the ex-bond bill of entry and would only hold the Custom Duty to the tune of Rs. 69,34,532/- payable by the assessee along with interest as applicable under the Section 28 and Section 28AA(1) [erstwhile 28AB(1)] of the Customs Act, 1962."

3.2 It is noticed that the order-in-original issued after the remand by the Tribunal in appeal No. C/13046/2018 observes as follows:

> *"28. I find that as per the DGI Note dated 6-6-1986 of Directorate General of Inspection, Customs & Central Excise, New Delhi, it is always possible to know the total 'Lino Fill' (Quantity of oil in the pipeline) of the whole pipeline system. This is apparently the partially re-warehoused quantity by the assessee has not been able to clarify the same. The quantity contained in the various sectors like Vadinar to Viramgam, Viramgam to Koyali and Viramgam to Mathura are also known. There should not be such difficulty in accounting for the imported crude oil and levy of the duty on the same. Since the imported crude oils are allocated to the two refineries on full tanker basis there will be no difficulty in accounting for the whole imported quantity. There is no simultaneous movement of the imported and Bombay High Crude Oils. These two crude oils are pumped in batches. It could not be the requirement of the refinery and It may be mentioned for imported crude oil and Bombay High Crude Oil are received separately in different tanks at refinery end. They are also taken up for refining separately.* ***<u>So the assessee is intentionally avoiding the responsibility to provide the crucial documents for the re-conciliation of accounts for Customs Duty assessment purpose</u>****. The CBEC has approved the proposal and permitted M/s. IOCL to bring imported crude oil to Baroda refinery under bond from Vadinar Port subject to condition that M/s. IOCL provide a reconciliation, for purposes of re-warehousing certificate every quarter to the satisfaction of the proper officer."*

3.3 Similarly in para 23 of order in original in appeal No. 13053, the following has been observed:

23. 1 find that as per the DGI Note dated 6-6-1986 of Directorate General of Inspection, Customs & Central Excise, New Delhi, it is always possible to know the total 'Lino Fill' (Quantity of oil in the pipeline) of the whole pipeline system. This is apparently the partially re-warehoused quantity by the assessee has not been able to clarify the same. The quantity contained in the various sectors like Vadinar to Viramgam, Viramgam to Koyali and Viramgam to Mathura are also known. There should not be such difficulty in accounting for the imported crude oil and levy of the duty on the same. Since the imported crude oils are allocated to the two refineries on full tanker basis there will be no difficulty in accounting for the whole imported quantity. There is no simultaneous movement of the imported and Bombay High Crude Oils. These two crude oils are pumped in batches. It could not be the requirement of the refinery and It may be mentioned for imported crude oil and Bombay High Crude Oil are received separately in different tanks at refinery end. They are also taken up for refining separately. ***So the assessee is intentionally avoiding the responsibility to provide the crucial documents for the re-conciliation of accounts for Customs Duty assessment purpose****. The CBEC has approved the proposal and permitted M/s. IOCL to bring imported crude oil to Baroda refinery under bond from Vadinar Port subject to condition that M/s. IOCL provide a reconciliation, for purposes of re-warehousing certificate every quarter to the satisfaction of the proper officer.*

3.4 In appeal No. C/13050 in order dated 28.03.2018, the order in original issued in remand proceedings observes as follows:

"23 I find that as per the DGI Note dated 6-6-1986 of Directorate General of Inspection, Customs & Central Excise, New Delhi, it is always possible to know the total 'Lino Fill' (Quantity of oil in the pipeline) of the whole pipeline system. This is apparently the partially re-warehoused quantity by the assessee has not been able to clarify the same. The quantity contained in the various sectors like Vadinar to Viramgam, Viramgam to Koyali and Viramgam to Mathura are also known. There should not be such difficulty in accounting for the imported crude oil and levy of the duty on the same. Since the imported crude oils are allocated to the two refineries on full tanker basis there will be no difficulty in accounting for the whole imported quantity. There is no simultaneous movement of the imported and Bombay High Crude Oils. These two crude oils are pumped in batches. It could not be the requirement of the refinery and It may be mentioned for imported crude oil and Bombay High Crude Oil are received

> *separately in different tanks at refinery end. They are also taken up for refining separately. So the assessee is intentionally avoiding the responsibility to provide the crucial documents for the re-conciliation of accounts for Customs Duty assessment purpose. The CBEC has approved the proposal and permitted M/s. IOCL to bring imported crude oil to Baroda refinery under bond from Vadinar Port subject to condition that M/s. IOCL provide a reconciliation, for purposes of re-warehousing certificate every quarter to the satisfaction of the proper officer.*
>
> *24 Assessee cannot approbate and reprobate. If assessee avails benefit of a permission/notification, he has to necessarily comply with the conditions of the permission/notification. Here I rely on the case reported in (2008)229 ELT 3(SC) in the matter of CC v. Indian Rayon. Eligibility clause in relation to permission granted by department to the assessee* ***must be given a strict meaning. Reconciliation cannot be made without proper documentary evidence showing the cause and effect relation so I cannot grant the assessee any benefit as being claimed by them in the ex- bond bill of entry*** *and would only hold the differential Custom Duty to the tune of Rs.2,46,23,313/ payable by the assessee along with interest as applicable under the Section 28 and Section 28AA(1) [erstwhile 28AB(1)] of the Customs Act, 1962."*

In other cases also there are similar observations. It is seen that the entire case is based on the issues arising out of reconciliation of imported and domestic crude and consequent duty liability. While remanding, Tribunal had directed the reconciliation however as per the impugned order, the appellants have failed to produce the necessary documents and records before lower authorities to enable the reconciliation. No further progress can be made in the case without a proper reconciliation of the records to ascertain if there was any short payment of customs duty on imported crude oil. Keeping all the factors in my mind, we set aside, the impugned order and remand the same back to the original adjudicating authority for fresh adjudication. This is last opportunity being provided to the appellants to produce the necessary records for the purpose of reconciliation. Since the matter is quite old, it is expected that it will be adjudicated within a period of six months from the date of order. Miscellaneous applications for certain additional grounds have been raised in the Miscellaneous applications filed before Tribunal. The same will also be considered by the original adjudicating authority while passing orders in remand proceedings. The appeals are allowed by way of remand to the original adjudicated authority. Miscellaneous applications filed by the applicants are disposed of in above terms.

(Operative portion of the order pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha