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

REGIONAL BENCH- COURT NO.1

Customs Appeal No.11163 of 2018
C/MISC/10357/2023

(Arising out of OIO-AHM-CUSTM-000-COM-014-17-18 dated 08/02/2018 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

Spicejet Limited **.........Appellant**
319, Udyog Vihar, Phase-Iv,
GURGAON, HARYANA,

VERSUS

C.C.-Ahmedabad **.........Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

WITH
Customs Appeal No.12354 of 2018

(Arising out of OIO-AHM-CUSTM-000-COM-020-18-19 dated 23/05/2018 passed by Principle Commissioner Customs, Excise and Service Tax-AHMEDABAD)

Spicejet Limited **.........Appellant**
319, Udyog Vihar, Phase-Iv,
GURGAON, HARYANA,

VERSUS

C.C.-Ahmedabad **.........Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:
Shri. Manish Jain, Advocate for the appellant
Shri Girish Nair, Assistant Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

Final Order No. 11789-11990 /2024

DATE OF HEARING: 05.08.2024
DATE OF DECISION:05.08.2024

SOMESH ARORA

This is the Miscellaneous application bringing on record, the additional evidence which is to the effect that at various other ports including the port at which the present dispute is involved, the practise is to permit the fuel which is in the tank at the time of arrival of the aircraft to be deducted from the quantity which is taken out from the territorial parts of India. The miscellaneous application has been brought on record with the request to consider the relevance of this document and that the same should be permitted under Rule 10 & 23 of the CESTAT PROCEDURE RULES, 1982.

2. The learned AR on the other hand opposes the prayer that the refusal is the general rule and acceptance was an exception and such belated request should not be entertained.

3. We have considered the conflicting stands as also the judgments quoted by both the sides. We find that the issue is no more *res integra* that as pointed out in various case law by the appellant:-

- National Thermal Power Co. Ltd Vs CST 1998 (99) ELT 200 (SC)
- Utkarsh Corporate Service Vs CCE 2014 (34) STR35 (Guj.)
- Vatsal Resources Pvt. Ltd Vs CCE 2023 (68) GSTL 279 (T)
- Forward Resources Pvt. Ltd Vs CCE 2023 (69) GSTL 76 (T)
- Shresth Leasing & Finance Ltd Vs CCE 2023 (68) GSTL 143 (T)
- Reynolds Petro Chem Ltd Vs CCE 2023 (68) GSTL 292 (T)

Such requests have been allowed subject to relevance.

3.1 It is clear that there is no absolute provision that this Tribunal should not entertain the evidences which are considered relevant for the purpose of ongoing adjudication as well as the appeal. The surmise is based upon the ruling that the Tribunal is last fact finding authority.

3.2 We are therefore inclined to allow the miscellaneous application as also the evidences being brought on record being relevant to the present appeal as same are worthy of consideration by the department.

3.3 We also find that that allied issue is on valuation of oil imported into India through the aircraft and into the body of aircraft. On this issue the learned advocate emphasises the decision of JET AIRWAYS (INDIA) LTD. VS. COMMISSINER OF CUS. (I) (AIRPORT), MUMBAI reported on 2021 (377) 7

ELT 83 (L.B) which deals with the issue and which could not be considered by the lower authority because of non availability of the same.

3.4 We have already allowed the request for adducing additional evidence. Therefore, at this stage, we deem it proper to remand the matter to lower authority to consider the issue in the light of additional evidence as well as the new case law quoted on the point of valuation by the appellants. It will be a fresh consideration on both the issues of quantity as well as valuation. Matter is remanded on the above terms.

4. Miscellaneous application is allowed. Appeal is allowed by way of remand.

(Dictated and pronounced in the open court)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi