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

REGIONAL BENCH-COURT NO. 3

Customs Appeal No. 12957 of 2019- DB
[C/Misc./10059/2023]

(Arising out of OIA-KDL-CUSTM-000-APP-044-19-20 dated 09/09/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

OIL ENERGY ....**Appellant**
Survey No. 30/1, Plot No. 39,
Nirmala Nagar, Meghpar Kumbhardi,
Anjar, Kutch, Gujarat

VERSUS

Commissioner of Customs-Kandla ......**Respondent**
Custom House,
Near Balaji Temple,
Kandla, Gujarat

WITH

(i) Customs Appeal No. 10566 of 2021- DB (PARTH RASAYAN P LTD)
(ii) Customs Appeal No. 10567 of 2021- DB (GLOBAL PETRO)
(iii) Customs Appeal No. 10769 of 2021- DB (P D INDUSTRIES)

[(Arising out of OIA-KDL-CUSTM-000-APP-37-19-20 dated 09/09/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD), (Arising out of OIA-KDL-CUSTM-000-APP-38-42-19-20 dated 09/09/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)]

APPEARANCE:
Shri Rajesh Chhibber, Advocate & Shri Vikas Mehta, Advocate for the Appellant
Shri Rajesh R Kurup, Superintendent (AR) & Shir P Ganesan, Superintendent (AR) for the Respondent

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

Final Order No.11797-11800/2024

DATE OF HEARING: 30.04.2024
DATE OF DECISION: 27.08.2024

RAMESH NAIR

These appeals and miscellaneous application are directed against the Orders-In-Appeal as detailed below:-

Sr. No	Appeal No.	Applicant name	OIA No.	Date
1.	C/12957/2019 in C/Misc/10059/202	OIL ENERGY	OIA-KDL-CUSTM-000-APP-044-19-20	09/09/2019

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2.	C/10566/2021	PARTH RASAYAN P LTD	OIA-KDL-CUSTM-000-APP-37-19-20	09/09/2019
3.	C/10567/2021	GLOBAL PETRO	OIA-KDL-CUSTM-000-APP-38-42-19-20	09/09/2019
4.	C/10769/2021	P D INDUSTRIES	OIA-KDL-CUSTM-000-APP-38-42-19-20	09/09/2019

In these appeals, the case of the department is that since the appellant's product is classifiable as Diesel under CTH 27101290 as against "Petroleum Hydrocarbon Solvent" as declared by the appellants and since the import of diesel is restricted as the same can be imported only through state trading enterprise, the goods are liable for confiscation, consequent penalty and redemption fine. The learned Commissioner (Appeals) has remanded the matter to the adjudicating authority for reconsidering the case by giving some observations. The appellants are aggrieved by the said observation given in the impugned order therefore the present appeals are filed.

2. Shri Rajesh Chhibber, Learned Counsel and Shri Vikas Mehta Consultant appeared for the appellants.

3. Shri Rajesh Chhibber submits that in these appeals, the matter was remanded by the Commissioner (Appeals) to the adjudicating authority, by giving some adverse observation whereby the appellants are aggrieved with. He submits that the said observations will influence the decision of the adjudicating authority against the assessee. He further submits that the appellant had filed cross objection in the Revenue's appeals before the Commissioner (Appeals) which was not considered. Therefore, the order of the Commissioner (Appeals) without considering the cross objection is not legal and proper and the same are liable to be set aside.

3.1 He further submits that if at all, the order of the Commissioner (Appeals) remanding the matter, is upheld, the direction to the adjudicating authority to consider the remand as open remand may be given, so that justice can be delivered by the adjudicating authority.

4. Shri Vikas Mehta appearing for the P. D. Industries, submits that the Revenue had filed appeal not for enhancing the penalty and also not on the point of imposition of fine. Therefore, order of the Learned Commissioner (Appeals) on this count is not legal and proper. hence, same needs to be set said.

5. On the other hand, Shri P Ganesan, Learned Superintendent (AR) & Shri Rajesh R Kurup, Learned Superintendent (AR) appearing for the Revenue reiterates the findings of the impugned order.

6. We have carefully considered the submission made by both the sides and perused the records. We find that the appellants' cross objection have not been considered before the commissioner (Appeals) in Revenue's appeals. Therefore, there is a gross violation of principles of natural justice. Moreover, the Commissioner (Appeals) order ought to have been restricted only on the grounds of appeal made by the Revenue. Therefore, on this count the Commissioner (Appeals) order is not legal and proper and suffers from the violation of principles of natural justice.

7. Accordingly, we set aside the impugned order and remand the matter to the Commissioner (Appeals), for reconsideration of the entire case, on all the points, after giving sufficient opportunity to the appellant. Appeals are

allowed by way of remand to the Commissioner (Appeals). MA also disposed of.

(Pronounced in the open court on 27.08.2024)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

Raksha