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

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 149 of 2012
(Arising out of OIO-79-COMMr-2011 dated 14.11.2012 passed by Commissioner of Central Excise, Customs & Service Tax-Rajkot)

NAYARA ENERGY LIMITED ....**Appellant**
ESSAR HOUSE, K K MARG, PO-7945, MAHALAXMI,
MUMBAI-MAHARASHTRA

VERSUS

C.C.E. & S.T. RAJKOT ....**Respondent**
CENTRAL EXCISE BHAVAN,
RACE COURSE RING ROAD...INCOME TAX OFFICE,
RAJKOT, GUJARAT-360001

WITH

(i) Excise Appeal No. 150/2012 (Essar Logistics Limited); (ii) Excise Appeal No. 151/2012 (Anil Keswani); (iii) Excise Appeal No. 152/2012 (Essar Shipping Limited)

(Arising out of OIO-79-COMMr-2011 dated 02.12.2011 passed by Commissioner of Central Excise, Customs & Service Tax-Rajkot)
(Arising out of OIO-79-COMMr-2011 dated 14.11.2011 passed by Commissioner of Central Excise, Customs & Service Tax-Rajkot)
(Arising out of OIO-79-COMMr-2011 dated 02.12.2011 passed by Commissioner of Central Excise, Customs & Service Tax-Rajkot)

APPEARANCE:
Shri Vishal Agarwal & Ms. Dimple Gohil, Advocate for the Appellant
Shri. Kalpesh P. Shah, Superintendent (AR) for the Respondent

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

Final Order No. A/ 11783-11786 /2022

DATE OF HEARING: 22.11.2022
DATE OF DECISION: 29.11.2022

RAMESH NAIR

The brief facts of the case are that M/s Nayara Energy Limited (Formerly known as Essar Oil Limited) had cleared 2776.19 MT of furnace oil between February 2007 to April 2007 to Essar Shipping Limited. As per the said purchase order, Nayara Energy Limited supposed to supply 5000 MT of Furnace Oil to vessels of M/s Essar Shipping Limited anchored at Hazira Port. While clearing the said consignments, the central excise duty was discharged by debiting the Served From India Scrips ('SFIS') produced by Essar Shipping Limited before the Jurisdictional Central Excise

Authorities. The Directorate of Revenue Intelligence (DRI) has pursuant to an investigation, issued a show cause notice dated 06.03.2009 contending *inter alia* that the factum of supply of furnace oil to the four named vessels of m/s Essar Shipping Limited namely MV Badri Prasad, MV Mahavir Prasad, MV Chandi Prasad and MV Anassa, was not established with reference to the discrepancies observed in the documents, during the investigation. Basis the same, the Notice suggested that the actual user condition had been violated by Essar Shipping Ltd. and the goods cleared against the SFIS licenses were diverted / sold in contravention to the provisions of para 3.6.4.6 of the Foreign Trade Policy (FTP). The adjudicating authority vide his order in original dated 14.11.2011 upheld the allegations made in the show cause notice and consequently, confirmed the demand of duty, interest and penalties. Being aggrieved by the said order-in-original, the appellants filed the present appeals.

2. Shri Vishal Agarwal learned counsel along with Ms. Dimple Gohil, Advocate appearing on behalf of the appellant submits that the adjudicating authority confirmed the allegations without taking cognizance of the documentary evidence produced by M/s Nayara Energy Limited / Essar Shipping Limited as also without appreciating that there was no evidence to establish that the actual user condition had been violated as no investigation had been conducted with respect to the use to which the said furnace oil had allegedly been put to. The adjudicating authority has also not taken cognizance of the submission to the effect that the violation of actual user condition, if any, could be a ground for raising a demand against Essar Shipping Limited and not against Nayara Energy Limited who had fulfilled all the conditions precedent to the exemption being available at the time of clearance of the goods. Shri Vishal Agarwal submits that the appellant submitted various documents before the adjudicating authority in support of the contention that furnace oil had been delivered to the four vessels of Essar Shipping Limited. However, the same had not been considered by the

adjudicating authority while passing the order. He referred to the said documents as detailed below:

A. Furnace Oil has been supplied to MV Badri Prasad under cover of Shipping Bill C-06 dated 23.02.2007 and C-10 dated 27.02.2007.

i. Arrival Report filed with Surat Customs in respect of barge Hope Island-II dated 22.02.2007 recording that the ships stores (Furnace Oil)-560 MT was carried by it from the Bedi Port

ii. Bunker Delivery Note signed by the Chief Engineer of MV Badri Prasad noting that 558.710 MT of furnace oil had been delivered on 28.02.2007 between 1100 hrs to 1420 hrs. Bunker Delivery Note dated 04.03.2007 recording of delivery of 546 MT of furnace oil to vessel MV Badri Prasad bearing the signature of the Chief Engineer of MV Badri Prasad.

iii. Invoice of ZEE Shipping dated 12.03.2007 in respect of freight charges for of 567 MT furnace oil for MV Badri Prasad from Bedi to Hazira and Hazira jetty to Hazira Anchorage.

iv. Email from the master of the MV Badri Prasad to personnel of Essar Shipping Ltd noting that 546MT of furnace oil had been received by MV Badri Prasad On 04.03.2007, leading of which commenced at 0800 hrs and finished at 1215 hrs.

v. Report of Subhash Chander & Associates, which has recorded that between 01.03.2007 and 03.03.2007, 545.100MT had been received as per Essar Steel Hazira weighbridge, which was transferred to barge Hope Island-II.

vi. The Statement of Facts signed by the Master of MV Badri Prasad recording that furnace oil at the time of arrival was 586 MT while at the time of departure was 1690.7 MT.

B. Furnace Oil has been supplied to MV Mahavir Prasad under cover of Shipping Bill C-07 dated 14.03.2007.

i. Departure Report filed with Surat Customs in respect of barge Hope Island -II dated 19.03.2007 which records that the same had arrived with ships stores (Furnace Oil)-580 MT.

ii. Bunker Delivery Note signed by the Chief Engineer of MV Mahavir Prasad noting that 558 MT of furnace oil had been delivered on 20.03.2007. The same also bears a counter signature of the authorized signatory of barge Hope Island-II.

iii. Invoice of Gujarat Maritime Board (GMB) dated 16.03.2007 on ZEE Shipping in respect of 580 MT of furnace oil carried by barge Hope Island -II.

iv. Invoice of ZEE Shipping dated 23.03.2007 in respect of freight charges for transportation of 558 MT furnace oil for

MV Mahavir Prasad from Bedi to Hazira and Hazira jetty to Hazira Anchorage.

v. Email from Zee Shipping services to Port Officer, GMB; Coast Guard; Indian Navy informing them that barge Hope Island -II would call upon Hazira Anchorage between 16/17th March 2007 for supply of bunker to MV Mahavir Prasad.

vi. Oil record book of MV Mahavir Prasad which records that on 20.03.2007, 550MT of furnace oil has been loaded.

vii. The Statement of Facts signed by the Master of MV Mahavir Prasad recording that furnace oil at the time of arrival was 666 MT while at the time of departure was 1224 MT.

C. Furnace Oil has been supplied to MV Chandi Prasad under cover of Shipping Bill C-08 dated 21.03.2007.

i. Arrival Report filed with Surat Customs in respect of barge Hope Island-II dated 05.03.2007 which records that the same had arrived with ships stores (Furnace Oil)-560 MT.

ii. Bunker Delivery Note signed by the Chief Engineer of MV Chandi Prasad noting that 557.290 MT of furnace oil had been delivered on 25.03.2007. The same also bears a counter signature of the authorized signatory of barge Hope Island-II.

iii. Invoice of Gujarat Maritime Board (CMB) dated 23.03.2007 on ZEE Shipping in respect of 560 MT of furnace oil carried by barge Hope Island-II.

iv. Invoice of ZEE Shipping dated 30.03.2007 in respect of freight charges for transportation of 557.290 MT furnace oil for MV Chandi Prasad from Bedi to Hazira and Hazira jetty to Hazira Anchorage.

v. The Statement of Facts signed by the Master of MV Chandi Prasad recording that furnace oil at the time of arrival was 13998 MT while at the time of departure was 1864.5 MT.

D. Furnace Oil has been supplied to MV Anassa under cover of Shipping Bill C-09 dated 23.04.2007.

i. Arrival Report filed with Surat Customs in respect of barge Hope Island-II dated 27.04.2007 which records that the same had arrived with ships stores (Furnace Oil)- 580 MT.

ii. Bunker Delivery Note signed by the Chief Engineer of MV Anassa noting that 557 MT of furnace oil had been delivered on 27.04 2007. The same also bears a counter signature of the authorized signatory of barge Hope Island-II

iii. Invoice of ZEE Shipping dated 02.05.2007 in respect of freight charges for transportation of 557 MT furnace oil for MV Anassa from Bedi to Hazira and Hazira jetty to Hazira Anchorage

iv. Email from Llyods register informing the result of the sample of furnace oil tested by them. One of the vessels which had been tested was 557 MT of furnace oil delivered on 27.042007.

v. Oil record book of MV Anassa which records that on27.04.2007, 557 MT of furnace oil has been loaded between 0900 hrs and 1400 hrs.

3. He submits that on the basis of numerous documents for each consignment as referred above, it clearly establishes that the furnace oil supplied by the appellant M/s Nayara Energy Limited has been delivered to the vessels of Essar Shipping Limited. Accordingly, the condition of actual user has been scrupulously made by M/s Nayara Energy Limited. He submits that the majority of documentary evidences submitted by the appellant before the adjudicating authority have been discarded by him on the pretext that the said documents were produced at the time of adjudication and the same were not available during investigation by DRI. He submits that without pursuing the authenticity of the documents, he brushed aside the same, which is clearly a violation of principles of natural justice. He alternatively submits that the appellant M/s Nayara Energy Limited have cleared the goods on the basis of proper SFIS Scrips which is not under dispute, therefore, if at all there is any violation of actual user condition, the demand at the most should have been raised against the recipient of the goods i.e. M/s Essar Shipping Limited. On this ground also the demand is not sustainable. In support of his submission, he placed reliance on the following judgments:

- Hindustan Petroleum Corporation Ltd. 2013 (298) ELT 294 (Tri. Mum.)
- CCE vs Mumbai-II vs Hindustan Petroleum Corporation 2018 (362) ELT 33 (Bom)
- Essar Oil Limited 2010 TIOL 1647 CESTAT AHM
- Commissioner of Central Excise vs Kirloskar Chillers Pvt. Ltd. 2018 (360) ELT 190 (Tri. Mum.)
- Voltamp Transformers Ltd. 2012 (276) ELT 238 (Tri. Amd.)
- Commissioner of Central Excise vs Voltamp Transformers Ltd. 2013 (296) ELT A16 (Guj.)

- Universal Power Transformer Pvt. Ltd. 2010 (256) ELT 244 (Tri. Bang.)
- CCE Chandigarh vs Aarti Steels 2000 (126) ELT 1106 (Tribunal)
- A V Jain vs Union of India 1987 (29) ELT 872 (Bom.)
- Rajendra Jagannath Parekh 2004 (175) ELT 238 (Tri. Mum)
- CCE Ahmedabad-II vs Chhajusingh S. Kanwal 2011 (272) ELT 202 (Guj.)
- CCE vs Shree Krishna Industries 2017 (345) ELT 629 (Guj.)
- Continental Cement Com. 2014 (309) ELT 411 (All.)
- J.P. Iscon Pvt. Ltd. 2022 (63) GSTL 64 (Tri. Ahmd.)
- Trinity DIC Forgers Ltd. 2017 (348) ELT 276 (Tri. Mum.)
- Mahindra & Mahindra Ltd. 2019 (368) ELT 105 (Tri. Mum.)
- Commissioner vs Mahindra & Mahindra Ltd. 2019 (368) ELT A41 (SC)
- Reliance Securities Ltd. vs CST 2019 (20) GSTL 265 (Tri. Mum)
- Dinesh M. Kotian 2016 (42) STR 772 (Tri. Mum.)

4. Shri Kalpesh P. Shah, learned Superintendent (Authorized Representative) appearing on behalf of the Revenue reiterates the findings of the impugned order.

5. We have carefully considered the submissions made by both the sides and perused the records.

6. The limited issue in the present case is that whether the furnace oil supplied by M/s Nayara Energy Limited was received M/s Essar Shipping Limited and used in their four vessels as claimed by the appellant or otherwise and consequently, the actual user condition is complied with or otherwise.

7. We find that the case involved mainly the facts that whether the goods supplied by M/s Nayara Energy Limited was received and consumed in the vessels of M/s Essar Shipping Limited. The appellant have submitted various documents which prima facie show that the goods have been delivered to all the four vessels i.e. MV Badri Prasad, MV Mahavir Prasad, MV Chandi Prasad and MV Anassa. The adjudicating authority has discarded all the documents submitted by the appellant during the

adjudicating process on the ground that these documents were produced first time before the adjudicating authority and same were not available during the investigation of the case. We find that even the documents evidencing the payment transaction against the supply of goods was also not considered by the adjudicating authority on the flimsy ground that the same were not signed. In this fact, we are of the view that it is not necessary that all the documents which are allowed to be relied upon for defense of the noticee must be made available during the investigation of the case. It is only after show cause notice is issued, the appellant make out its defense and for that purpose whatever documentary evidence are available with them are produced before the adjudicating authority. The adjudicating authority cannot reject those documentary evidence without verifying the authenticity of the said documents. If the adjudicating authority has any doubt on such documents produced at the time of adjudication, he is free to ensure the authenticity of the said documents. Once, its authenticity is proved then the said documents must be considered for a fair adjudication. In the present case, the adjudicating authority without ensuring the authenticity of the documents rejected the same, therefore, same is in gross violation of principles of natural justice.

8. As regard the payment transaction against the supplies made by M/s Nayara Energy Limited to M/s Essar Shipping Limited, statements of payment particulars submitted by the appellant was rejected only on the ground that the said document was not signed. It is surprising that it is not the statement alone which evidence the payment transaction but the same has to be verified from the books of accounts of the appellant. The adjudicating authority before rejecting such evidence must have verified the books of accounts to check the correctness of the payment transaction between supplier M/s Nayara Energy Limited and purchaser of goods M/s M/s Essar Shipping Limited. By not doing so, the adjudicating authority again violated the principles of natural justice. In this undisputed fact of

the case, we are of the view that the matter needs to be reconsidered by the adjudicating authority, after considering all the documents submitted by the appellant whether the same was available at the time of investigation or produced during the adjudication. The adjudicating authority is free to check the correctness and authenticity of the documents produced by the appellants. Accordingly, we set aside the impugned order and remand the matter to the adjudicating authority for passing a fresh order after observance of principles of natural justice. The de novo order be preferably passed within two months from the date of this order. Appeals are allowed by way of remand to the adjudicating authority.

(Pronounced in the open court on 29.11.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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