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

REGIONAL BENCH- COURT NO.3

Customs Appeal No.11542 of 2013

(Arising out of OIA-25/2013/CUS/COMMR-A-/KDL dated 21/02/2013 passed by Commissioner of CUSTOMS-AHMEDABAD)

Bharat Petroleum Corporation Ltd ....**Appellant**
Kandla Installation, P.B.No. 33, Gandhidham
KUTCH, GUJARAT

VERSUS

C.C.-Kandla ....**Respondent**
CUSTOM HOUSE,
NEAR BALAJI TEMPLE, KANDLA, GUJARAT

APPEARANCE:
Shri T.C. Nair, Advocate for the Appellant
Shri Tara Prakash, Assistant Commissioner (AR) for the Respondent

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

Final Order No. A/ 10064 /2023

DATE OF HEARING: 10.01.2023
DATE OF DECISION: 10.01.2023

RAMESH NAIR

The issue involved is that whether customs duties on import of bulk liquid cargo (Motor Spirit) are payable on the value determined as per the quantity received in shore tanks, as claimed by the appellants, or on the transaction value as per the B/L or invoice of the overseas supplier, as held by the Lower authorities, irrespective of whether the imported goods are chargeable to *ad valoerm* rate of specific rate of duties.

02. Shri T.C.Nair, learned counsel appearing on behalf of the appellant submits that this issue has been considered in various judgments including the judgment of Hon'ble Supreme Court whereby, it was ruled that in case of difference of quantity mentioned in the invoice and shore tank quantity in respect of imported bulk liquid cargo, the quantity of shore tank should be considered for assessment. He relied on following judgments and board circulars:-

- Mangalore Refinery & Petrochem- 2015 (323) ELT 433 (SC)
- Mangalore Refinery & Petrochem- 2006 (205) ELT 753 (Tri)

- Mangalore Refinery & Petrochem- 2006 (233) ELT 528 (Tri)
- Mangalore Refinery & Petrochem- 2014 (307) ELT 119 (Tri)
- Bharat Petroleum Corpn- 2017-TIOL-2316-CESTAT-AHM
- M.F.C.A. (D.R.) Circular No.96/2002-Cus dated 27.12.2002
- M.F. (D.R.) Circular No.6/2006-Cus dated 12.01.2006
- Circular No.34/2016-Cus dated 26.07.2016

03. Shri Tara Prakash, learned Assistant Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

04. On careful consideration of the submission made by both the sides and perusal of records, we find that in the light of the settled law in the judgment cited by the learned counsel particularly, the landmark judgment of Apex Court in the case of Mangalore Refinery & Petrochem (supra). The issue in hand has been settled in favour of the assessee. Accordingly, the assessment of import of bulk liquid cargo should be done on the basis of shore tank quantity and not on the basis of quantity mentioned in the invoice.

05. Accordingly, the impugned order is not sustainable hence the same is set aside. Appeal is allowed.

(Operative portion pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul