CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

CUSTOMS Appeal No. 10794 of 2013-DB

[Arising out of Order-in-Original/Appeal No 03-04-2013-CUS-COMMR-A-KDL dated 09.01.2013 passed by Commissioner of CUSTOMS-KANDLA]

Hindustan Petroleum Corpn Ltd ...Appellant

North West Zone, Finance Dept, C/O. Auto Care Centre,
Judges Bungalow Road, Nr. Ashray Apartment, Opp- Satyagrah Chhavani,
Bodakdev,
AHMEDABAD
GUJARAT-380015

VERSUS

C.C.-Kandla ...Respondent

Custom House,
Near Balaji Temple,
Kandla, Gujarat

WITH

CUSTOMS Appeal No. 10795 of 2013-DB

[Arising out of Order-in-Original/Appeal No 03-04-2013-CUS-COMMR-A-KDL dated 09.01.2013 passed by Commissioner of CUSTOMS-KANDLA]

Hindustan Petroleum Corpn Ltd ...Appellant

North West Zone, Finance Dept, C/O. Auto Care Centre,
Judges Bungalow Road, Nr. Ashray Apartment, Opp- Satyagrah Chhavani,
Bodakdev,
Ahmedabad
Gujarat-380015

VERSUS

C.C.-Kandla ...Respondent

Custom House,
Near Balaji Temple,
Kandla, Gujarat

AND

CUSTOMS Appeal No. 10920 of 2013-DB

[Arising Out Of Order-In-Original/Appeal No 06-2013-CUS-COMMR-A-KDL Dated 21.01.2013 Passed By Commissioner Of CUSTOMS-KANDLA]

Hindustan Petroleum Corpn Ltd ...Appellant

North West Zone, Finance Dept, C/O. Auto Care Centre,
Judges Bungalow Road, Nr. Ashray Apartment, Opp- Satyagrah Chhavani,
Bodakdev,
Ahmedabad
Gujarat-380015

VERSUS

C.C.-Kandla ...Respondent

Custom House,
Near Balaji Temple,
Kandla, Gujarat

APPEARANCE:
Shri Kiran Chavan, Advocate for the Appellant
Shri. Tara Prakash, Deputy Commissioner (Authorized Representative) for the Respondent

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

FINAL ORDER NO.A /10226-10228 /2023

DATE OF HEARING: 23.01.2023
DATE OF DECISION: 07.02.2023

RAMESH NAIR

Out of these three appeals two appeals bearing No. C/10794/2013 and C/10795/2013 and the Appeal No. C/10920/2013 were filed against the impugned order dated 21.01.2013, whereby the Learned Commissioner (Appeals) has upheld the rejection of refund claims. The core issue involved in the present case is that whether the valuation of bulk liquid cargo has to be taken on the quantity actually received i.e shore tank receipt quantity or the quantity mentioned in the bill of leading/ invoice. As regard Appeal No. C/10920/2013 besides the above merit of the issue, one more issue involved is that whether the refund claim is maintainable without challenging the assessment of bill of entry.

2. Shri Kiran Chavan, Learned Counsel appearing on behalf of the appellant submits that as of now it is a settled legal position that the quantity of bulk liquid cargo for the purpose of assessment should be taken as per shore tank receipt quantity and not as per bill of leading/ invoice. In this regard, he placed reliance on the 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 (2003 (151)ELT T-21
- M.F.(D.R.) Circular No. 6/2006-cus dated 12.01.2006 (2006 (193) ELT T-40
- Circular No. 34/2016-Cus dated 26.07.2016

As regard the dispute on assessment of bill of entry for the purpose of refund, , he submits that all the bills of entry were provisionally assessed and the reassessment was not carried out by the Assessing Authority. Therefore, refund could not have been rejected on the ground that the assessment of bill of entry was not challenged.

3. On the other hand Shri Tara Prakash, Learned Deputy Commissioner (Authorized Representative), appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. As regard the issue that which quantity should be taken for the purpose of assessment in case of import of liquid bulk cargo, we find that this issue is no longer *res integra*, as the same is settled by various Tribunals judgments and by the Hon'ble Apex Court in case of Manglore Refinary. Therefore, on the merit of the case the issue is settled, hence we hold that for the purpose of assessment of Bulk liquid Cargo in the present case the duty is payable on the quantity received in shore tank and not the quantity mentioned in Bill of Leading/invoice. As regard the Appeal No. C/10920/2013 which is in respect of refund of the differential duty between the shore tank quantity and the quantity mentioned in bill of lading in respect

of 9 bills of entry, we find that it is admitted fact that these bills of entry were not challenged by filing appeal before the Commissioner (Appeals). However, it is a claim of the appellant that the bills of entry were not finally assessed. In our view the appellant has opportunity to challenge, if they aggrieved with, the reassessment or final assessment of bills of entry. However, in the present case neither by the department nor by the assessee, made it clear that whether the assessment of bills of entry is still provisional or final, therefore the matter of refund needs to be remanded to the Adjudicating Authority. As a result the Appeal No.C/10794/2013 and C/10795/2013 are allowed and Appeal No. C/10920/2013 is allowed by way of remand to the adjudicating authority.

(Pronounced in the open Court on 07.02.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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