FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 31/01/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70118-70119/2017-EX[DB] dated 09/01/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/921/2009	**BHARAT PETROLEUM CORPORATION LTD.** (A GOVT. OF INDIA UNDERTAKING), ALINAGAR, MUGHALSARAI, CHANDAULI (U.P.)
2	E/923/2009	**INDIAN OIL CORPORATION LTD.** MARKETING DIVISION-ALI NAGAR, MUGHALSARAI, CHANDAULI (U.P.)
		Name and Address of Respondent
3		C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad
4		-C.C.E Allahabad 38,M.G.Marg, civil Lines, Allahabad

-

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

V. Lakshmi Kumaran, ALD
3/1A/3 OPP AUTO
SALES,Above the Office Of
Blue Dart/DHL Courier,
COLVIN ROAD, LOHIA
MARG ALLAHABAD-
211001

6 **L. P. Asthana & Reena Khair**
R - 163, IInd Floor,
Greater Kailash - 1,
New Delhi,
Delhi
110048

7 Bar Association, CESTAT, Allahabad

8 Director Publications, Customs, Excise. I.P. Estate, Delhi

9 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

10 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

11 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

12 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

13 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

14 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

15 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

16 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

17 C.D.R. 18 Office Copy 19 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/921 & 923/2009-EX[DB]

(Arising out of Orders-in-Original No. (69 & 70/2007) 06 & 05 of 2009 dated 12/01/2009 passed by Commissioner of Central Excise, Allahabad)

M/s Bharat Petroleum Corporation Ltd., (E/921/2009) &

M/s Indian Oil Corporation Ltd. (E/923/2009) **Appellant**

Vs.

Commissioner of Central Excise, Allahabad **Respondent**

Appearance:

Shri Atul Gupta, Advocate, (In Appeal No. E/921/2009) &
Ms. Aastha Gupta, Chartered Accountant, (In Appeal No. E/923/2009)
for Appellants

Shri Rajeev Ranjan, Joint Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 09/01/2017

FINAL ORDER NO. 70118 - 70119/2017

Per: Anil G. Shakkarwar

Appeal No. E/921/2009 is arising out of Order-in-Original No. (69/2007) 06 of 2009 dated 12/01/2009 passed by Commissioner of Central Excise, Allahabad. Appeal No. E/923/2009 is arising out of Order-in-Original No. (70/2007) 05 of 2009 dated 12/01/2009 passed by Commissioner of Central Excise, Allahabad. The issue is same in both the appeals. Therefore, both the appeals are taken together for decision.

2. Brief facts of the case are that the both the appellants are public sector undertaking engaged in the manufacture of Petroleum products. Both the appellants manufacture 5% Ethanol blended Petrol (Motor Spirit). In both the cases blending of Ethanol & Motor Spirit in the proportion of 5% of Ethanol & 95% of Motor Spirit was being undertaken at the time of dispensing the product into the tanker within the licensed premises. It appeared to Revenue that there is no separate blending facility available with the appellants and therefore, the blending is not taking place, and that as a result, the appellants were inadmissible to avail concessional rate of duty under Notification 62/2002- Central Excise dated 31/12/2002. Therefore, M/s Bharat Petroleum Corporation Ltd. was issued with a Show Cause Notice No. Dem/18/Commissioner/Allahabad/2007 dated 12/12/2007 for the period from March, 2003 to May, 2004 wherein the allegations were that the appellant had supplied separately Ethanol & Motor Spirit and they did not clear 5% Ethanol blended Petroleum. Another allegation in the said Show Cause Notice was that 5% Ethanol blended Motor Spirit & Pure Motor Spirit were sold at the same price and concession on account of SAED (Special Additional Excise Duty) @ Rs.5.70 per liter was being collected from the customers and retained by the appellants and therefore, the same was recoverable under Section 11(D) of the Central Excise Act, 1944. Through the said Show Cause Notice the appellants

were called upon to show cause as to why concession on account of SAED (Special Additional Excise Duty) amounting to Rs.74,20,714/- availed by them while procuring the M. S. during the period from March, 2003 to March, 2004 may not be demanded and recovered from them under Section 11A(1) read with Section 11(D) of Central Excise Act, 1944. In respect of, M/s Indian Oil Corporation Ltd. they issued with a Show Cause Notice No. Dem/17/Commissioner/Allahabad/2007 dated 12/12/2007 with the same allegations covering a period from January, 2003 to June, 2004 wherein Indian Oil Corporation Ltd. was called upon to show cause as to why concession on account of SAED (Special Additional Excise Duty) amounting to Rs.3,43,26,040/- availed by them while procuring the M.S. during the period from January, 2003 to June, 2004 may not be demanded and recovered from them under Section 11A(1) read with Section 11(D) of Central Excise Act, 1944. The said Show Cause Notice issued to M/s Bharat Petroleum Corporation Ltd. was decided through impugned Order-in-Original No. (69/2007) 06 of 2009 dated 12/01/2009 & the said Show Cause Notice issued to M/s Indian Oil Corporation Ltd. was decided through impugned Order-in-Original No. (70/2007) 05 of 2009 dated 12/01/2009. The appellants submitted before the Original Authority that Motor Spirit & Ethanol were pumped into tank-trucks in the requisite proportion and Ethanol blended

Motor Spirit was manufactured in tank-trucks and that activity of manufacture took place in tank-trucks within appellants factory and resultantly Ethanol blended Motor Spirit was cleared outside the factory and therefore, contention of Revenue that appellant did not have facility for manufacture of Ethanol blended product was not correct. Further, they contended that the goods are sold at the prices controlled through administrative price mechanism and they were not permitted to sale the products at prices higher than fix by Government and therefore question of recovery of any excess duty did not arise. The Original Authority did not appreciate the contentions of appellant and in both the cases confirmed the demand and imposed equal penalty. Aggrieved by the said Orders-in-Original appellants have filed the present appeals before this Tribunal.

3. Heard the ld. Counsel for the appellants and perused the show cause notice.

4. Heard the ld. D. R. who has supported the impugned Orders-in-Original.

5. Having considered the rival contentions and on perusal of records it is observed that it is undisputed that blending of Ethanol & Motor Spirit was taking place within the licensed premises and blended Motor Spirit was being cleared out of the license premises. Further, it is noticed that the said Show Cause Notices is vague in as much as the provisions of Section 11A are invoked by reading them together with

Section 11D of Central Excise Act, 1944 whereas Section 11A is applicable for recovery of duties of excise and Section 11D of Central Excise Act, 1944 is applicable for such sums which are not duties of excise. Section 11A of said Act empowers authorities to recover duties which are levialbe but short paid. Section 11D of the said Act provides for recovery of such sums which are collected by the manufacturer from buyers of the goods which are in excess of Central Excise duty levialbe. In the present case, Revenue could not decide as to Rs.74,20,714/- & Rs.3,43,26,040/- were the duties of excise short paid or sums which were collected in excess of duties of excise. Therefore, there is an error in the invocation of provisions of law ~~sections involved~~ in the said Show Cause Notice. Therefore both Show Cause Notices are not sustainable in law. In view of the same, both the appeals are allowed and both the Orders-in-Original are set aside.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member (JUDICIAL)

-Sd/-
(ANIL G. SHAKKARWAR)
Member(TECHNICAL)

Ansari

प्रमाणित प्रति / Certified True Copy
8.2.17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001