CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/905/2006-DB

[Arising out of Order-in-Appeal No. 250-2006 dated 31/03/2006 passed by CC&CE(Appeals), Cochin]

Commissioner of Central Excise, Customs and Service Tax Cochin-cce
C R BUILDING,
I S PRESS ROAD, ERNAKULAM,
COCHIN, - 682018
KERALA

Appellant(s)

Versus

Bharat Petroleum Corporation Ltd
Irumpanam, Cochin

Respondent(s)

Appearance:

Shri Pakshirajan, Asst. Commissioner(AR) — For the Appellant
Shri K. Krishnamurthy, Consultant — For the Respondent

Date of Hearing: 14/12/2017
Date of Decision: 14/12/2017

CORAM:
HON'BLE SHRI S.S GARG, JUDICIAL MEMBER
HON'BLE SHRI V. PADMANABHAN, TECHNICAL MEMBER

Final Order No. 23318 / 2017

Per : S.S GARG

The present appeal filed by the Revenue is directed against the impugned order dt. 31/03/2006 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) allowed the appeal of the assessee and set aside the Order-in-Original. Assessee has also filed cross-objections.

2. Briefly the facts of the present case are that the respondent cleared 8531.500 KL of Motor Spirit (MS) and 24923.500 KL of High Speed Diesel (HSD) through the Company Owned Company Operated (COC) outlets. The retail selling price of MS and HSD comprises of assessable value, excise duty, sales tax and dealers margin. But the dealers margin was retained by the respondent in respect of sale thorugh COCO and not included in the assessable value of the goods for payment of duty. Accordingly a show-cause notice was issued demanding Central Excise duty on the said margin amounts which has not been paid by them and the demand was confirmed by the lower authority. But on appeal, Commissioner(Appeals) reversed the decision of original authority. Hence the present appeal by the Revenue.

3. Heard both the parties and perused records.

4. The learned AR for the Revenue has submitted that the impugned order is not sustainable in law as the same has been passed without appreciating the facts and the law. He further submitted that the assessable value for clearing to COCO sales was determined in terms of Rule 7 of the Central Excise Valuation Rules, 2000. He further submitted that the COCO outlets being a related person of M/s.BPCL, the assessable value should have been determined under Rule 9 of the Central Excise Valuation Rules, 2000 and the value of the goods shall be the normal transaction value at which these goods are sold by the related person at

the time of removal to the buyer or where such goods are not sold to the buyer, the buyer being related person who sells the goods in retail.

5. On the other hand, the learned consultant appearing for the assessee has defended the impugned order and submitted that the Commissioner(Appeals) after considering all the documents on record has rightly come to the conclusion and set aside the Order-in-Original. He further submitted that the assessable value of COCO outlets includes the dealers margin which is clearly evident from the comparative statements submitted by the assessee. The COCO has a higher assessable value when compared to the assessable value for sales through dealers. He further submitted that the difference between the COCO assessable value and dealers margin are not exactly equal as the recovery towards dealers margin includes tax elements of Central Excise and sales tax which are eligible for abatement under Central Excise Act, 1944. He also submitted that the normal transaction value arrived at by the assessee for COCO outlet is correct in terms of Rule 7 of the Central Excise Rules. The learned consultant in support of his submission has relied upon the decision in the assessee’s own case reported in 2010(261) ELT 695(Tri. Chennai) wherein it has been held that the normal transaction value arrived by the assessee for COCO outlet is to be determined in terms of Rule 7 of Central Excise Rules.

6. After considering the submissions of both the parties, we find that there is no infirmity in the impugned order passed by the

Commissioner(Appeals). Here it is pertinent to reproduce the reasoned finding of the Commissioner(Appeals) in para 5 of the impugned order, which is reproduced below:-

> *5. I have carefully gone through the grounds of appeal and submissions made by the appellant at the time of personal hearing. The appellant have contended that when MS and HSD is cleared to dealer's outlet, excise duty was paid in terms of Section 4(1)(a) of Central Excise Act, 1944, wherein the duty was paid on the transaction value i.e. at the price recovered from the dealer. However when the dealer sells the product in retail he recovers "dealer's margin" through the "Retail Selling Price" which is over and above the price invoiced to the dealers i.e. (assessable value plus excisable duties plus local sales tax) and therefore they contended that the dealers margin not being a recovery as a part of the price at which the goods are sold to the dealer is not liable to excise duty. The appellant also contended that when the clearance is made to the COC's, the assessable value is determined in terms of Rule 7 of Central Excise Valuation Rules read with Section (1)(b) of Central Excise Act, 1944, wherein to determine the assessable value a back working is done from the retail selling price and all the permissible deduction on account of taxes and the excise duties are excluded, to arrive at the assessable value. The appellant, further added that the RSP is identical at both the COCO's and Retail outlet and both included dealer's margin. Therefore, while arriving at the assessable value for clearances to COCO, other elements such as sales tax, other local lines and excise duty is deducted from RSP and thus the dealer's margin is already included in the value on which the duty is being paid. Going through the comparative chart furnished by the appellant and other documents on records, I find that there is reasonable ground in the contention of the appellant. The RSP is fixed and to arrive the normal assessable value various deduction are to be granted. It was also found that assessable value of the goods cleared to COCO are higher than the assessable value i.e. normal transaction value in the case of dealers. Therefore there is no question of addition or retention of dealer's margin by the appellant. Accordingly, I find that the order of lower authority is unsustainable and is to be set aside.*

7. In view of the detailed reasoning given in the impugned order and also the decision in the assessee's own case cited supra, we are of the considered view that there is no infirmity in the impugned order which is upheld by dismissing the appeal of the Revenue.

(Operative portion of the Order was pronounced
in Open Court on **14/12/2017**)

V. PADMANABHAN **TECHNICAL MEMBER**	**S.S GARG** **JUDICIAL MEMBER**

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