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

Appeal(s) Involved:

**C/22/2006-DB**

[Arising out of Order-in-Original No. SIB/42/04
CUS/46/2005 dated 27/10/2005 passed by the
Commissioner of Customs, Cochin]

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| **Indian Oil Corporation Ltd.**<br>Irumpanam Terminal, Cochin<br>Marketing Terminal, Irumpanam,<br>Ernakulam Dist, Kerala | **Appellant(s)** |

**Versus**

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| **C.C-Cochin**<br>Custom House<br>Cochin – 682 009<br>Kerala | **Respondent(s)** |

**Appearance:**

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| Shri Mohammed Ibrahim, Advocate<br>World Trade Center, No. 404-406, 4th Floor, South Wing, Brigade Gateway Campus, No. 26/1, Dr. Rajkumar Road, Malleswaram West, Bangalore – 560 055 | For the Appellant |
| Shri Pakshirajan, Assistant Commissioner (AR) | For the Respondent |

Date of Hearing: 10/09/2018
Date of Decision: 12/09/2018

**CORAM:**
**HON'BLE MR. P DINESHA, JUDICIAL MEMBER**
**HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER**

**Final Order No. 21349 / 2018**

**Per : P. DINESHA**

This appeal is filed by the assessee challenging the order of

Commissioner of Customs dated 27.10.2005 wherein the Commissioner has after adjudication held that the assessee was liable to pay amount collected as duty, in terms of Section 28B of the Customs Act, 1962.

2. During the course of hearing, Shri Mohammed Ibrahim, advocate appeared for the assessee-appellant and Shri Pakshirajan, DR appeared for the Revenue. We have heard both the parties, perused the appeal record and have gone through various case-laws referred to during the course of arguments.

3. Brief facts that are relevant are that the appellant is engaged in refining and marketing of petroleum products, is permitted to receive and store imported customs duty paid petroleum products for release later on, on payment of appropriate customs duty on the transaction value. The appellant also receives non-duty paid excise stocks at their terminal which is stored in the same tank as the duty paid customs stock, pursuant to the mixed bonding permission granted to them. The appellant sells petroleum products to the other oil marketing companies or clear the same to their own depots and the price of the petroleum products including the excise duty element is fixed in terms of Administered Price Mechanism (APM for short).

4. A show-cause notice dated 14.10.2004 was issued *inter alia* alleging that the appellant had collected excess amounts representing the customs duty which was deposited into the Oil Pool Account; the same should have been deposited into the credit of the Consumer Welfare Fund under the head of customs and therefore the liability to the duty in terms of Section 28B

arose etc. The same culminated in the impugned order by the learned Commissioner. During the course of arguments learned advocate pointed out that the issue involved is no more *res integra* as the same issue has been considered and decided in a number of cases including appellant's own cases for earlier period and in this connection, he relied on the following decisions:

a. *Indian Oil Corporation Ltd. Vs. CC, Kandla – 2008 (227) E.L.T. 263 (Tri.-Ahmd.)*
b. *Indian Oil Corporation Ltd. Vs. CCE, Guntur – 2007 (210) E.L.T. 543 (Tri.-Bang.)*
c. *Indian Oil Corporation Ltd. Vs. CCE, Visakhapatnam – 2007 (211) E.L.T. 590 (Tri.-Chennai)*
d. *Hindustan Petroleum Corporation Ltd. Vs. Commissioner – 2003 (162) E.L.T. 391 (Tribunal)*
e. *CESTAT Final Order No. S/435 & A/577/2005 dated 7.7.2005 in the matter of BPCL Vs. CCE, Kandla*
f. *Hindustan Petroleum Corporation Ltd. Vs. CCE, Kandla – 2007 (219) E.L.T. 408 (T)*

5. In one of the cases, this Bench after considering various other decisions available, has held as under:

> *"6. We have gone through the records of the case carefully. It is seen that during the relevant periods, the prices of the petroleum products were fixed under the Administered Price Mechanism (APM). The appellants have explained that whenever there is excess collection of duty, the same is surrendered to the oil pool account. In the*

*Commissioners of Customs, Visakhapatnam and Chennai have already decided the issue in favour of the appellants. These orders have not been appealed against by the Department. Therefore, in terms of the Apex Court judgment in the case of CCE v. Bigen Industries Ltd. reported in 2006 (197) E.L.T. 305 (S.C.), the Department cannot be permitted to again raise the same dispute as the issue has reached finality between the appellants and the Department. The issue is also covered by the Tribunal's decision cited supra. In these circumstances, the impugned Orders-in-Original are set aside and the appeals are allowed."*

6. Similarly, Ahmedabad Bench of the Tribunal in the case of Indian Oil Corporation Ltd. has after considering decisions of various other Benches of the CESTAT, has held as under:

*"7. We have considered the submissions. There are a series of decisions of the Commissioners, Commissioner (Appeals) and the Tribunal holding that there is no excess collection of duty from the customers and therefore, demand is not sustainable. We also find merit in the appellant's contention that as per the Administered Price Mechanism Scheme any excess recovery has to be deposited in the oil pool account and any deficiency is made good by oil pool account, and therefore, it cannot be said that there is excess collection of duty. It may not be exactly fit into the scheme of Section 28B of Customs Act, 1962 or Section 11D of the Central Excise Act, 1944 but it has to be accepted that the purpose of legislation of these sections is fulfilled by this provision in the Administered Price Mechanism Scheme. Another*

*point which goes in favour of the appellants is that while fixing the price of petroleum products, the Government gives the final price and oil companies do not have any freedom to change this. This is the reason that there is a system of adjustment of duty paid by the oil pool account. Therefore, we allow the appeal and set aside the order of the Commissioner of Customs, Kandla."*

7. Learned DR reiterated and supported the findings of the Commissioner.

8. We have considered the rival contentions. We find that the issue involved in this case has already been gone into and decided by the various Benches. Going by the stare decisis, we set aside the impugned order and the demand raised therein and allow the appeal with consequential benefits, if any.

(Order pronounced in Open Court on **12/09/2018**)

**(P. ANJANI KUMAR)**
**TECHNICAL MEMBER**

**(P. DINESHA)**
**JUDICIAL MEMBER**

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