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

Appeal(s) Involved:

E/839, 840/2012-DB

[Arising out of Order-in-Original No. 13/2011 & 14/2011 dated 27/12/2011 passed by the Commissioner of Central Excise & Customs, Cochin.]

Commissioner of Central Excise
Cochin Commissionerate
C R BUILDING,
I S PRESS ROAD, ERNAKULAM,
COCHIN . 682018
KERALA

Appellant(s)

Versus

M/s. BHARAT PETROLEUM CORPORATION LTD
KOCHI REFINERY POST BAG NO.2, AMBALAMUGAL,
ERNAKULAM . 682302
KERALA

Respondent(s)

Appearance:

Mr. Kuriyan Thomas, Advocate
MENON & PAI
P.B. NO.1911
IS PRESS ROAD,
COCHIN . 682 018
KERALA

For the Appellant

Mr. Gopa Kumar
Jt. Commissioner (AR)

For the Respondent

Date of Hearing: 23/07/2019
Date of Decision:04/11/2019

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER
HON'BLE SHRI P. ANJANI KU MAR, TECHNICAL MEMBER

Final Order No. 20984-20985 2019

Per: P. ANJANI KU MAR

Heard both sides and perused the records of the case.

2. Briefly state the facts of the case are that the appellants, M/s BPCL, Cochin who are manufacturers of petroleum products, have imported Reformate, an intermediate high Octane stream generated in petroleum refinery; this imported reformate was further blended with low octane/high olefin content intermediate stream to produce desired quantity of Motor Spirit (Euro III MS) commonly known as petrol, which is cleared on payment of duty. The appellant's imported two consignments under Be 254218 dated 17.9.2009 and Be No 259999 dated 22.12.2009 and initially classified the product under 27101113 and paid duty. Later they revised the classification to CETH 27101119 and paid differential CVD. They have taken credit of the same for discharging duty liability. Two SCNs 2/2011 dated 06.01.2011 and 25/2011 dated 28.4.2011, demanding ineligible input credit availed and utilized of Rs 24.15 Cr and 252.32 Cr were issued while proposing penalty under Rule 15 of CCR,2004 read with Section 11 AC of CEA,1944. The show cause Notices were dropped by Commissioner vide OTOs 13&14/2011 dated 27-12-2011. Committee of Chief Commissioners has reviewed the orders and have found that the orders are not legal and proper and accordingly Revenue filed these appeals.

3. Revenues case is that the reformate imported by the appellants is nothing but Motor Spirit commonly known as Petrol; as per definition at supplementary notes to chapter 27 of Schedule to the CETA, Motor Spirit means any hydro carbon oil(excluding crude mineral oil) which has a flash point below 25Deg C and which either by itself or in admixture with any other substance is suitable for use as fuel in spark ignition engines; as per test report of the Chemical Examiner, the impugned product is. colourless, clear, volatile liquid compose of mineral hydro carbon oil having flash point below 25Deg C and distillation range is in general agreement with that specified for MS under IS: 2796-1995; in terms of Rule 2(k) of Cenvat Credit Rules, 2004, input credit of the same is not permissible and that the EDT bill of entry on the strength of which the appellants have taken credit is not a valid document as per Rule 9(1)(b) &(c) of CCR,2004.

4. The appellants contend that if the reformate was 'Petrol' there was no

need for them to blend the same to produce Euro-III and Euro-IV petrol; the impugned goods do not fall under the category of Motor Spirit commonly known as Petrol and as such is eligible to be considered as an input under CCR,2004; the chemical examiner has not tested for all the parameters and only on the basis that a few parameters are matching, the product cannot be called Motor Spirit, commonly known as petrol; department has not produced any evidence that the impugned product is used as such. Commissioner has accepted their contentions and has dropped the proceedings.

5. We find that the appellant submit that reformat and motor spirit commonly known as petrol are different and therefore the exclusion clause under Rule 2(k) of Cenvat Credit Rules, 2004 is not applicable to reformat.

(ii) As per Chapter Note2, subheading Note 4 and supplementary note (a) under Chapter 27 of C. Ex. Tariff Schedule, any Hydrocarbon satisfying the following criteria would fall under the general category of "Motor Spirits":

(a) It should be a petroleum oil or a preparation containing **70%** or more of petroleum oil';
(b) It should fall under the category of Light Oil Preparation i.e., More than 90% by volume distills at less than 210° C;
(c) Flash point is less than 25° C and it should be suitable for use as fuel in spark ignition engines, either by itself or by admixture with some other material.

(iii) However under the general category of Motor Spirits, described above, there are different distinctly identified hydrocarbons as under:

(a) CETH : 271011 11/ 271011 12/271011 13 Special Boiling Point Spirits (SBPS) These are motor spirits which do not contain any anti-knock preparations and with a difference of not more than 60 degree between temperatures at which *5%* by volume and 90% by volume distill;
(b) 271011 19: Other Motor Spirits (i.e., other than SBPS)

(iv) Again, under 271011 19 itself, there are further distinct identification as under:

(a) Motor Spirit commonly known as petrol;
(b) Motor Spirit which is known as Naphtha;
(c) Other Motor Spirits (i.e., which is neither Petrol nor Naphtha).

6. We find that the test report given by the Chemical Examiner was done for colour, volatility, flash point and initial and final boiling points. However, as per IS; 2796-1995 requires a detailed technical analysis including that of density, recovery at different temperature ranges, research octane number, Antiknock Index, Sulphur and Lead contents, Reid Vapour Pressure, Vapour Lock Index, Benzene Content, Copper Strip Corrosion, Water Tolerance of Gasoline-Alcohol Bends etc. We find that the Chemical Examiner has tested only 4 parameters and gives report that the sample is in general agreement with Motor Gasoline. Per contra, the appellants have submitted various test reports conducted in the refinery for the reformat and it is seen that the parameters are different from that of Motor Spirit as per BIS Euro III specifications. We find that the test reports submitted by the Chemical Examiner are not comprehensive. We also find that in respect of the petroleum products, test reports of BPCL who are experts in the field are to be more relied upon than the test report given by the Chemical Examiner.

7. The appellants contend that motor spirit commonly known as petrol is a finished petroleum product and is used as fuel in petroleum industry; reformate is only a high-octane intermediate stream and cannot be equated to petrol; only the products meeting the BIS standards for IS:2796 for EURO 3 can only be sold as petrol. Therefore, the product that does not fall under the BIS category cannot be called motor spirit commonly known as petrol. We find that it is not the Chemical Examiner's case that the impugned product meets the standards for petrol. We also find force in the argument of the appellant that reformate falls under 2710 1119 as under 'other motor spirit' i.e., other than SBPS. We find that Commissioner has gone through the literature, various test reports and the classification of the impugned product and has rightly held that reformate is correctly classifiable under 2710 1119 as a 'residual entry'. Relying upon the CESTAT's decision in the *case of Tuftween Petrochemicals: 2005 (185) ELT 203 (Tri.-Del.),* Commissioner finds that what is excluded from the purview of input under Rule 2k of CENVAT Credit Rules, 2004 is motor spirit commonly known as petrol and motor spirits which are not known as petrol in common parlance cannot be said to be excluded. Commissioner had also held that the

appellants have availed credit on the strength of EDT Copy of Bill of Entry and has Rule 9(1)(b) of CENVAT Credit Rules, 2004 does not mention any specific copy of the same, the appellants have rightly availed credit after payment of concerned duties and on receipt of goods in the factory.

8. In view of the above, we find that the Chemical Examiner Report is not comprehensive and therefore, it cannot be concluded on basis of the report that the impugned product i.e., reformate is motor spirit adhering to BIS: 2796-1995 standards for EURO II, III, IV Standards. Therefore, it cannot be called motor spirit commonly known as petrol as is understood in common parlance. We find that the report of BPCL who are experts in the field is to be relied upon in comparison to Chemical Examiner's report which is not comprehensive and conclusive.

9. In the result, we do not find any reason to interfere with the impugned orders and accordingly, we reject both the appeals filed by the Revenue.

(Order was pronounced in Open Court on **04/11/2019.**)

S.S. GARG
JUDICIAL MEMBER

P. ANJANI KU MAR
TECHNICAL MEMBER

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