CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 2100 of 2010

((Arising out of Order-in-Appeal No. 85/2010 dated 23/04/2010 passed by the Commissioner of Customs (Appeals) Bangalore)

Indian Oil Corporation Ltd. ....**Appellant**
Mangalore Terminal, Mangalore - 575 010

VERSUS

Commissioner of Customs Mangalore ....**Respondent**
New Customs House, Panambur
Mangalore – 575 010

WITH

Customs Appeal No. 394 of 2011

(Arising out of Order-in-Appeal No. 166/2009 dated 23/12/2009 passed by the Commissioner of Customs (Appeals) Bangalore]

Hindustan Petroleum Corporation Ltd. ....**Appellant**
Mangalore LPG Import Facility Village Bala, Via Katipalla, Mangalore – 565030

Commissioner of Customs Mangalore ....**Respondent**
New Customs House, Panambur
Mangalore – 575 010

APPEARANCE:

Mr. Ravi Raghavan & Mrs. Neetu James, Advocates — For the Appellants

Mr. P. Gopakumar, Additional Commissioner (AR) — For the Respondent

CORAM:

HON'BLE MR. ASHOK JINDAL, JUDICIAL MEMBER
HON'BLE MR. C. J. MATHEW, TECHNICAL MEMBER

Final Order Nos. 20069-20070 / 2022

Date of Hearing: 02/03/2022
Date of Decision: 02/03/2022

Per : ASHOK JINDAL

Both the appeals are having common issue, therefore both are disposed of by a common order.

2. The appellants are engaged in the business of refining of crude oil and marketing petroleum products and procured Liquified Petroleum Gas or LPG for domestic market by importing the same. Internationally, LPG sold as Commercial Butane, Commercial Propane or Commercial Propane-Butane Mixture. These imports of the above said products were made by the appellant in terms of Notification No. P-20029/18/2001-PP dated 28/01/2003 issued by the Ministry of Petroleum and Natural Gas. During the period April 2004 to May 2005, M/s. Indian Oil Corporation Ltd. imported Commercial Butane and filed provisional Bills of Entry by classifying under CTH 2711 1300 for payment of basic Customs Duty and 2711 1900 for payment of CVD. The assessments were done provisionally which were finalized on 12/03/2009.

3. In the case of Hindustan Petroleum Corporation Ltd. during the period March 2004 to June 2005, the appellant

imported Commercial Butane, Commercial Propane or Commercial Propane-Butane Mixture and filed provisional Bills of Entry by classifying under CTH 2711 1300 for payment of basic Customs Duty and 2711 1900 for payment of CVD. The said Bills of Entry were finalized on 23/12/2009.

3.1. In the assessment orders, it has been held that demurrage charges paid by the supplier on account of the hold up of the vessels at the port is includible in the assessable value and rejected the classification of LPG under CTH 2711 1900 claimed by the appellant for taking the benefit of Notification No. 82/2004-Cus. and Notification No. 11/2005-Cus. Against the said orders, appellants are before us.

4. The learned counsel for the appellant submits that the issue whether demurrage charges being cost incurred post importation is includible in the assessable value or not has been settled by the Hon'ble Apex Court in the case of ***Commissioner of Central Excise, Mangalore Vs. Mangalore Refinery & Petroleum Chemicals Limited reported at 2015 (325) E.L.T. 214 (S.C)*** wherein it has been held that demurrage charges are not includible in the assessable value as the same are essentially post importation charges which are incurred after the goods reached the Indian ports. He also relied on the decision of ***Tata Steel Limited V. Union of India reported at 2019 (370) E.L.T. 100 (Orissa).***

4.1. He further submitted that the impugned goods are LPG and the same are classified under CTH 2711 1900 and not under CTH 2711 1300. He submits that as per BIS IS 4576 there are three types of LPGs, based on their principal constituent (a) Commercial Butane (b) Commercial Butane-Propane Mixture and (c) Commercial Propane. The IS also prescribes the specifications for such gases to be considered as LPG. Therefore, their goods are to be classified as 'LPG' and they are entitled for benefit of Notification No. 82/2004-Cus. dated 18/08/2004 and Notification No. 11/2005-Cus. dated 01/03/2005 wherein the rate of duty on LPG was reduced. He also submitted that by filing the appeal before the learned Commissioner (Appeals) against the final assessment they have raised the issue of classification. Therefore, the observations of the learned Commissioner (Appeals) in the impugned orders are not correct.

5. On the other hand the learned AR submits that issue of inclusion of demurrage charges in assessable value has been settled and conceded the same. For the benefit of exemption Notifications, he submits that while filing Bills of Entry during the impugned period, the appellants themselves have classified their product under CTH 2711 1300 of the Customs Tariff Act and never disputed the same at the time of filing of Bills of Entry. The protest was made later on i.e. after finalization of Bills of Entry. Only after introduction of the beneficial Notification dated 18/08/2004 and 02/05/2005, the appellant wants to claim the benefit of the reduced duty, which is not permissible.

6. Heard both the parties. Considered the submissions.

7. On consideration of the submissions made by both the sides, the following issue emerges:

(a) Whether the demurrage charges are includible in the assessable value or not? and

(b) Whether the appellant is entitled for benefit of exemption Notification No. 82/2004 dated 18/08/2004 and Notification No. 37/2005 dated 02/05/2005 or not?

(a) Whether the demurrage charges are includible in the assessable value or not?

As the issue whether the demurrage charges are includible in the assessable value or not, has been settled by the Hon'ble Apex Court in the case of ***Mangalore Refinery & Petroleum Chemicals Limited*** (supra) wherein it has been held that the demurrage charges are not includible in the assessable value. Therefore, we hold that the demurrage charges are not includible in the assessable value as the same are essentially post importation charges that are incurred after the goods reached the Indian ports. Therefore, the demands on account of inclusion of demurrage charges in the assessable value are set aside.

(b) Whether the appellant is entitled for benefit of exemption Notification No. 82/2004 dated 18/08/2004 and Notification No. 37/2005 dated 02/05/2005 or not?

We find from the facts of the case and records placed before us and queries made during the course of the argument with the learned counsel that the issue of availability of benefit of notification was never raised by the appellants during the course of filing provisional Bills of Entry. Moreover, neither any protest was made and appellants themselves have classified their product under CTH 2711 1300 of the Customs Tariff Act. The learned Commissioner in the case of Indian Oil Corporation Limited has categorically recorded as under:

> *"The 5% rate of duty is applicable for Liquified Petroleum Gas (LPG) falling under chapter heading 27111900 of the Customs Tariff Act, 1962 vide Sl. No. 75D. The appellants had imported "Butane" all along by classifying the same under Customs Tariff Heading 27111300 even prior to amendment of the Notification No. 22/02 as amended by Notification No. 82/04 Cus. dated 18/08/04 when the rate of duty was uniform in respect of all the sub headings. By amendment, the rate of duty was reduced from 10% to 05% in respect of LPG, but even after amendment they continued to declare under the same heading 27111300 for which no reduced effective rate of 5% is applicable. Further by insertion of New Sl. No. 75E, the entries relating to petroleum products was rearranged thereby the LPG gas is classified under 27111900 and the effective rate of duty was made NIL. Even at that stage M/s. IOCL have declared their imported product as Butane only and classified under 27111300 attracting 10% duty."*

As observed by us that while filing the provisional Bills of Entry, no protest was made with regard to classification of their product i.e. LPG. Therefore, at this juncture, the issue of classification cannot be raised to get the benefit of the above cited Notifications.

7.1. Similar view was taken by this Tribunal in the case of ***Hindustan Petroleum Corporation Limited Vs. Commissioner of Central Excise, Pune - I - 2020 (9) TMI 561 - CESTAT MUMBAI*** and ***H.P.C.L Vs. CC, Kolkata - 2019 (4) TMI 1277 - CESTAT KOLKATA.*** Therefore, we hold that appellants are not entitled for benefit of exemption Notification No. 82/2004-Cus. dated 18/08/2004 and Exemption Notification No. 37/2005 dated 02/05/2005.

8. In view of the above, the appeals are disposed of.

(Operative portion of the order was pronounced
in the open court on **02/03/2022**)

(ASHOK JINDAL)
JUDICIAL MEMBER

(C. J. MATHEW)
TECHNICAL MEMBER

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