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

S.No.	Appeal No.	Appellant	Respondent
1.	E/429/2009	Chennai Petroleum Corporation Ltd.	Commissioner of Central Excise & Service Tax, LTU, Chennai
Arising out of Order-in-Appeal No.15/2009 dt. 18.05.2009 passed by Commissioner (Appeals) Central Excise & Service Tax, LTU, Chennai			
2.	E/430/2009	Chennai Petroleum Corporation Ltd.	Commissioner of Central Excise & Service Tax, LTU, Chennai
Arising out of Order-in-Appeal No.13/2009 dt. 11.05.2009 passed by Commissioner (Appeals) Central Excise & Service Tax, LTU, Chennai			
3.	E/59/2012	Commissioner of Central Excise & Service Tax, LTU, Chennai	Chennai Petroleum Corporation Ltd.
Arising out of Order-in-Appeal No.75/2011 dt. 28.10.2011 passed by Commissioner (Appeals) Central Excise & Service Tax, LTU, Chennai			

Appearance :

Shri Raghavan Ramabhadran, Advocate
For the Assessee

Shri K. Veerabhadra Reddy, JC (AR)
For the Revenue

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of hearing / decision : 02.07.2018

FINAL ORDER No. 41987-41989 / 2018

Per Madhu Mohan Damodhar

The issue in all these appeals being same, they are taken up together for common disposal.

2. The assessees are manufacturers of petroleum products. The products are cleared from the refinery through pipelines to the terminals of Oil Manufacturing Companies [OMCs] viz. HPCL, BPCL and IOCL located at various places. During the period, assessee was required to pay excise duty at the time

of removal from the refinery. Accordingly, the assessee were paying excise duty on the quantity removed from the factory. But the buyers (OMCs) were paying the price and excise duty only based on the quantity received ('receipt quantity') in their terminals, pursuant to the industry practice at that time. However, the receipt quantity did not match the despatched quantity from the refinery for various reasons. Hence department took the view that differential excise duty is required to be paid for the amount removed from the refinery but not received by the OMCs. Assessee paid up the differential duty liabilities as pointed out by the department, however preferred refund claims subsequently. Two refund claims were filed on 03.10.2006 for amounts of Rs.2,00,36,249/- (for the period September 2005 to March 2006) and Rs.1,00,02,235/- (for the period July 2005 to August 2005) respectively. The original authority rejected the refund claims vide orders No. RF 14/2008 and RF 13/2008 respectively both dt. 14.07.2008. Appeals against these rejections were also rejected by the Commissioner (Appeals) vide impugned orders No.15/2009 dt. 18.05.2009 and 13/2009 dt. 11.05.2009 respectively. Hence Appeal Nos. E/429/2009 & E/430/2009 by the assessee.

3. So also, assessee has preferred refund claim for an amount of Rs.1,31,43,973/- for the period April 2009 to July 2009 which similarly rejected by the original authority vide an order dt. 30.07.2010. On appeal, the Commissioner (Appeals) set aside the order of original authority and allowed the refund vide impugned order No.75/2011 dt. 28.10.2011. Hence Revenue has filed Appeal E/59/2012.

4. Today when the matter came up for hearing, on behalf of the assessee, Ld. Counsel Shri Raghavan Ramabhadran made oral and written submissions which can be broadly summarized as under :

(i) The reasons for receipt quantity not matching with the despatched quantity are for various reasons like —

(1) Quantity remaining in the pipeline which cannot be left empty due to technical reasons;

(2) Moisture content at the time of removal from the refinery and at the time of receipt at the oil terminal;

(3) Dip reading measurement varies at the receiving terminals; difference of 0.5 mm can make a huge difference

(4) Human error in dip reading;

(5) Other natural causes like temperature varies; about the size of the tank. Tank of CPCL was huge; Tank of OMCs was relatively small like a Jet.

(6) Transit of products in pipelines;

(7) Variation in density;

(8) Temperature reading time.

(9) OMCs did not always receive only lesser quantity than despatched. In many cases, they also receive excess quantities.

(ii) Since excise duty is payable on transaction value, the department should adopt the method where receipt quantity is less.

(iii) Adjustment is available in respect of excess supplies to the same OMC, i.e. the duty paid on excess quantity as per the Product Out-turn Certificate is available for adjustment against shortage of duty for supplies to OMC. However, only because the department did not agree to such adjustment, the assessee is being unnecessarily required to pay up a perceived differential duty. The assessee and the buyers have adopted measurement of quantity at the buyer's end as per the industry practice. However, the department is adopting a different practice which is the reason for this dispute.

(iv) The price received should be treated as transaction value for the quantities supplied. When such treatment is given, it is evident that the excise duty is more wherever OMCs had received lesser quantity than despatched.

(v) Ld. Advocate fairly submits that the issue per se stands decided against them by the Tribunal in *Bharat Petroleum Corporation Ltd. Vs CCE Kochi* - 2014 (314) ELT 744 (Tri.-Bang.).

5. On the other hand, Ld. A.R Shri K. Veerabhadra Reddy supports the impugned orders in respect of appeals filed by the assessee. He also placed reliance on the *BPCL* decision cited by Ld.Advocate and states that for the same reason, the Revenue appeal should also succeed.

6. Heard both sides and have gone through the facts.

7. Discernably, the issue *per se* has been thoroughly addressed by the Tribunal in the decision of *BPCL* cited by Ld. Advocate. The relevant portion of the BPCL decision is reproduced below :

> **"11.1** In the impugned cases the unit value adopted for each transaction is not disputed. Value determined and paid is not fixed under a contract with price variation clause. The assessments made on invoices is final w.r.t. value and quantity. Assessee cannot make *suo motu* adjustments contrary to the assessment on the invoices. Right course for the assessee would have been to follow provisional assessment. Notwithstanding the discrepancy between quantities ascertained by the assessee and the buyer,

then the transaction value would have been that as agreed mutually in a contract and paid by the OMC."

8. Following the above ratio laid down by the Tribunal, we do not find merit in the Appeals E/429/2012 and E/430/2012 filed by the assessee for which reason they are dismissed. So ordered.

9. For the same reasons, the Revenue Appeal No.E/59/2012 is allowed which will have the effect of restoring the order of the original authority in that case.

Appeals disposed of as above.

(dictated and pronounced in court)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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