IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

Cross Application No.: C/CO/02/2013
Appeal No.: C/00346/2012

(Arising out of Order-in-Appeal No. 08/2012 (P) Cus. dated 08.08.2012 passed by the Commissioner of Central Excise (Appeals), Chennai)

The Commissioner of Customs, : Appellant
No. 1, Williams Road,
Cantonment,
Trichy – 620 001

Versus

M/s. Hardy Exploration & Production (India) Inc., : Respondent
5th Floor, Westminster,
108, Dr. Radhakrishnan Salai,
Chennai – 600 004

Appearance:-
Shri. A. Cletus, ADC (AR)
for the Appellant
Shri. K. Sivarajan & Shri. R. G. Muthu Kumaran, Consultants
for the Respondent

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

Date of Hearing/Decision: **03.07.2018**

Final Order No. 42925 / 2018

Per Bench :

Briefly stated, the appellant had imported one self-propelled anchor handling, tug supply vessel along with consumables remaining on board such as Marine Gas Oil

('MGO' for short), hydraulic and lube oil, grease, paints and thinners on which the assessee/respondent in the above case claimed full exemption from the Customs Duties under Notification No. 21/2002-Cus. dated 01.03.2002 as amended.

1.2 A Show Cause Notice dated 20.04.2009 was issued proposing *inter alia* a demand of Rs. 12,30,644/- as Additional Duty of Customs under Section 116 of the Finance Act, 1999 after the Revenue noticing that the MGO which was declared by the assessee as falling under Tariff Item No. 2710 19 30 attracted Additional Duty of Customs at Rs. 2 per litre under the second schedule of the Act and therefore, assessee had wrongly availed benefit of Notification No.21/2002 *(supra).*

1.3 After considering the reply of the assessee, an adjudication Order was passed confirming the demand vide Order-in-Original No. 01/2009 dated 03.07.2009 and on appeal by the assessee, the Commissioner (Appeals) vide impugned Order-in-Appeal No. 08/2012 dated 08.08.2012 allowed the assessee's appeal by holding that the imported goods was MGO and not High Speed Diesel ('HSD' for short) oil which did not attract the Additional Duty of Customs under Section 116 of the Act. It also appeared that the

Ld. Commissioner (Appeals) was carried away by the import invoice of the assessee and the technical specification of MGO submitted by the assessee to show that MGO is different from HSD. Aggrieved, the Revenue has come in appeal.

2. Today when the matter came up for hearing, Ld. ADC (AR) Shri. A. Cletus appeared on behalf of the Revenue and Ld. Consultants Shri. K. Sivarajan and Shri. R. G. Muthu Kumaran appeared on behalf of the assessee/respondent.

3. We have heard the rival contentions, perused the record and have also gone through the various decisions referred to during the course of arguments.

4. Admittedly, both HSD and MGO are used only as fuel for compression engine either in automatic vehicles or marine vessels and in terms of technical specification for diesel fuel, there is not much variation between either of them. Further, in the HSN under Chapter Heading 2710 petroleum oils and oils obtained from bituminous minerals are classified into 7 categories and further, under Indian Customs Tariff which follows HSN classification, MGO classified in the HSN are sub-divided into three categories viz., 2710 19 20 – Aviation Turbine Fuel, 2710 19

30 – High Speed Diesel and 2710 19 40 – Light Diesel Oil (LDO). This clearly and categorically establishes the fact that HSD is nothing but MGO which is generally termed as diesel in India.

5.1 We also find force in the contentions of the Ld. AR that the clarification issued by M/s. Indian Oil Corporation Ltd. that depending on Marine Engine Fuel application for a vessel either on coastal or foreign run, HSD is supplied in place of MGO and that therefore, MGO and HSD are nothing but one and the same. Both are used as fuel in the land-use vehicles and marine-use vessels. The assessee has nowhere disputed the classification of the fuel in dispute under Tariff Heading 2710 19 30.

5.2 Now, the reliance by the Ld. AR on the decision of the Hon'ble Apex Court in the case of ***M/s. Dunlop India Ltd. Vs. UOI reported in 1983 E.L.T. 1566 (S.C)*** in the above context is relevant, wherein the Hon'ble Apex Court has held that *"..... meaning given to articles in fiscal statute must be as people in trade and commerce, conversant with the subject, generally treat and understand them in the usual course. Technical and scientific tests offer guidance only within limits …"*.

6. We also find force in the contention of the Ld. AR that most of the Orders of various Benches of the CESTAT have also held that MGO/LDO/HSD are one and the same, while extending the benefit of Notification 21/2002 *(supra)*.

7. In view of the above, we are of the opinion that the impugned Order of the Commissioner (Appeals) cannot be sustained for which reason we allow the Department Appeal which will have the effect of restoring the Order of the Original adjudicating authority. However, since the matter was mired in litigation, we find no justification in levying the penalty and consequently, penalty if any, is ordered to be deleted. Further, we find no merit in the Cross Objection (CO) filed by the assessee and the same is therefore treated as dismissed.

(Operative part of the order was pronounced in open Court)

(P Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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