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

E/656/2009

(Arising out of Order-in-Original No. 10/2009 dated 23.10.2009 passed by the Commissioner of Central Excise, Chennai – I)

M/s. Indian Oil Corporation Ltd. Appellant

Vs.

Commissioner of Central Excise, Chennai – I Respondent

Appearance

Shri S. Muthuvenkataraman, Advocate for the Appellant
Shri K. Veerabhadra Reddy, JC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **31.08.2017**

Final Order No. 42115/2017

Per Bench

Brief facts are that the appellants who are engaged in the manufacture lubricating oil is registered with the Central Excise Department. They are availing CENVAT credit on the inputs namely base oil, carbon black feed stock (CBFS), additives and packing materials used in the manufacture of their finished products. The inputs are sourced from M/s.

Chennai Petroleum Corporation Ltd. (CPCL). Base oil and CBFS are supplied by M/s. CPCL through dedicated pipelines. On intelligence, it was found that the appellant availed CENVAT credit on inputs namely base oil and removed the same 'as such 'to their other units without payment of appropriate duty and by reversing lesser duty. It was found that the appellant received inputs namely base oil on different grades through their dedicated pipelines and used the same in manufacture of different grades of lubricating oil. While clearing the inputs 'as such' to the other locations, appellant did not reverse the proportionate credit availed on such inputs but have paid only on the invoice value adopted for such clearances which is lesser than the assessable value adopted for payment by the supplier M/s. CPCL. The transaction value adopted by the appellant for such stock transfers on all the occasions was lesser than the assessable value adopted for payment of duty by the supplier M/s. CPCL. Thus, show cause notice was issued to the appellant alleging violation of provisions of Rule 3(5) of CENVAT Credit Rules, 2004 and raising demand of Rs.1,20,76,058/- being short-paid duty along with interest and also for imposing penalty. After due process of law, the original authority confirmed the demand of duty of Rs.1,20,76,058/- along with interest and imposed equal penalty under section 11AC of the Central Excise Act. The amount already paid by the appellant towards short-paid duty and interest (Rs.1,20,76,058/- + Rs.18,99,011/-) was appropriated. Hence this appeal.

2. On behalf of the appellant, ld. Counsel Shri S.Muthu Venkataraman submitted that there was a short-payment due to some mistake in accounting and as soon as the same was pointed out by the department, appellant had paid the differential duty, even before issuance of the show cause notice. That therefore the imposition of penalty is unwarranted and may be set aside as the appellants have no intention to evade demand of duty. Further, that the whole situation is a revenue neutral one, since whatever duty is paid by appellant, the sister units would be able to avail credit. It is also submitted by him that the appellant is contesting only the penalty imposed since duty and interest has been already paid before issuance of the show cause notice.

3. Ld. AR Shri K. Veerabhadra Reddy reiterated the findings in the impugned order. He submitted that since the appellant had short-paid the duty, the intention to evade payment of duty is very clear. Further, the demand has been raised invoking the extended period of limitation sine the appellant has accepted the liability by making payment for the extended period, it is to be presumed that they are guilty with the intention to evade payment of duty. That therefore there is no ground to set aside the penalties.

4. Heard both sides.

5. The appellant is confining the contest only on the penalty imposed. It is clear from the documents and the submissions made by both sides that the appellant has paid the short-paid immediately on being pointed out by the department and well before issuance of the show cause notice. Section 11(2)(AB) states that no show cause notice shall be issued if the duty along with interest as pointed out by Central Excise officer is paid by the appellant. Further, as pointed out by ld. Counsel for appellant the situation gives rise to a revenue neutral one. The decision laid in Deepak Cables Vs. Commissioner of Central Excise, Puducherry, Final Order No. 41280 & 41281/2017 and Temmco RC India Pvt. Ltd. – 2015 (323) ELT 299 (Mad.) has considered similar revenue neutral situations to set asdie penalty. In such circumstances, we do not find any ground for sustaining the penalty.

6. The impugned order is modified to the extent of setting aside the penalty imposed under section 11AC of the Act r/w Rule 15(2) of CENVAT Credit Rules, 2004. The appeal is partly allowed in the above terms with consequential relief, if any.

(Operative portion of the order was pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

Sulekha Beevi
(**Sulekha Beevi C.S.**)
Member (Judicial)

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Customs, Excise & Service Tax Appellate Tribunal

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