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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/3718/2004 Date 24/06/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
INDIAN OIL CO.
PHOOS MANDI. BATHINDA
INDIAN OIL CO. Appellant
Vs
C.C.E. LUDHIANA Respondent

I am directed to transmit herewith a certified copy of **Final order No. 374/2008** **Excise** dated 16-6-08

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. LUDHIANA
   F BLOCK .RISHI NAGAR.LUDHIANA
2. Adv. / Consult
   MR.L.P ASTHANA
   R-163, SECOND FLOOR, GREATER KAILASH-1, NEW DELHI - 110 048.
3. C.D.R.
4. ~~I.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 3718 of 2004

[Arising out of Order-in-Original No. 57/Ldh/ 2004 dated 26.4.2004 passed by Commissioner of Central Excise, Ludhiana.]

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	NO
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3. Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

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M/s. Indian Oil Corporation — Appellant

Vs.

Commissioner of Central Excise
Ludhiana — Respondent

Appearance:

Ms. Reena Khair, Advocate for the Appellant
Mr. Sanjay Kumar, DR for the Respondent

CORAM:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of decision : 16.6.2008

Final **ORDER NO. 374 / 08-EX**

Per M. Veeraiyan (for the Bench):

This is an appeal against the order of the Commissioner dated 26.4.04.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:

(a) The appellant has refineries as well as warehouses at various locations. The petroleum products are moved without payment of duty ~~with out payment of duty~~ under bond from the refinery to the warehouse or from one warehouse to another other warehouse. These movements are covered, during relevant time, by warehousing provisions contained in Chapter 7 of the Central Excise Rules 1944.

(b) In this case, IOC warehouse at Bathinda falling under the jurisdiction of Commissioner of Ludhiana has not received certain consignments despatched to them by IOC refinery / warehouse situated elsewhere. Duty involved on such consignments was to the tune of Rs.3,84,02,373/-. The Commissioner Ludhiana issued show cause notice demanding duty on the consignments which have not been received in the warehouse within his jurisdiction. The duty demand along with interest was confirmed on the ground that the appellant has received the invoices relating to the consignments and they were deemed to have taken 'constructive delivery' of the consignments. After confirming the demand, he appropriated the amount paid at the consignor's end.

4. The Ld Advocate submits that for the consignments not received in the warehouse action has to be initiated only at the despatching end. The consignor has already paid the duty. The order of the commissioner is with out jurisdiction. Ld DR reiterates the findings of the Commissioner.

5.1. We have carefully considered the submissions from both sides. In the present case, the movements of the consignments are covered by bond executed by the consignor; each consignment is moved under a document called AR 3A without payment of duty by the consignor. The consignee is required to give 're-warehousing certificate' indicating the date of arrival, actual quantity of goods received etc. Based on the 're-warehousing certificate' the obligations of the consignor is discharged in respect of quantity received by the consignee. The consignor is liable to pay, in case, the re-warehousing certificate confirming receipt of goods despatched to the consignee was not received within the stipulated period of 90 days. In other words, in respect of consignment, not received/ short received by the consignee, the liability to pay tax the duty is on the consignor and action is required to be taken by the officer in charge of the consignor's factory/ warehouse .

5.2. From the reading of the order of the Commissioner, we find that there is no dispute that the consignments in question were not physically received in the warehouse of IOC Bathinda. In these circumstances, the Commissioner Ludhiana does not have jurisdiction to demand the duty from the warehouse at Bathinda belonging to IOC. It has been noted in the order that the duty involved has been paid at the consignor's end. We do not find any justification for demand of interest or imposition of penalty on the warehouse at Banthinda belonging to IOC by the Commissioner Ludhiana.

6. We set aside the order and allow the appeal.

(Dictated in the open Court)

(Justice S.N. Jha)
President

(M. Veeraiyan)
Member(Technical)

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