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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

Date 27/02/2012

Appeal No. E/1161/2005 - EX[DB]

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

To :
C.C.E. DELHI I
C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002

**C.C.E. DELHI I** — Appellant

Vs

**M/S INDIAN OIL CORPN LTD** — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** A/226/ 2012 EX[DB] dated 24-2-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

**Copy to :**

1. Respondent
**M/S INDIAN OIL CORPN LTD**
SHAKURBASTI, ROHTAK ROAD,
NEW DELHI

2. Adv. / Consult
**MR.L.P. ASTHANA & MS REENA KHAIR**
R-163, SECOND FLOOR, GREATER KAILASH-1, NEW DELHI - 110 048.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd.,1512-B, Bhishm Pitamah marg,Opp. ICICI Bank of Defence Colony, New Delhi-3
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No. 2, R.K. Puram, New Delhi – 110 066.**
**Principal Bench, New Delhi**

**COURT NO. III**

**DATE OF HEARING : 21/02/2012.**
**DATE OF DECISION : 21/02/2012.**

**Excise Appeal No. 1161 of 2005**

[Arising out of the Order-in-Appeal No. 13/CE/DLH/2005 dated 27/01/2005 passed by The Commissioner Central Excise (Appeals), Delhi – I.]

For Approval and signature :
**Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
**Hon'ble Shri Mathew John, Member (Technical)**

| | | | |
|---|---|---|---|
| 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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | : | No |
| 3. | Whether their Lordships wish to see the fair copy of the order? | : | Seen |
| 4. | Whether order is to be circulated to the Department Authorities? | : | Yes |

CCE, Delhi – I — Appellant

Versus

M/s Indian Oil Corporation Ltd. — Respondent

**Appearance**

Ms. Renu, Authorized Representative (JDR) – for the appellant.

Ms. Reena Khair, Advocate – for the Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
**Hon'ble Shri Mathew John, Member (Technical)**

FINAL Order No. A/226/2012-EX (BR) Dated : ____________

**Per. Archana Wadhwa :-**

After hearing learned DR in support of the Revenue appeal and learned Advocate Ms. Reena Khair, Advocate for the respondent, we find that the short issue in the present appeal is as to whether in respect of sales made by the respondent from the oil installations where duty paid goods were stored, subsequent to their clearances from the refineries on payment of duty leviable at that point of time, are required to be considered as having been sold inclusive of the higher rate of special excise duty. It is seen that the special excise duty was introduced @ 16% adv. W.e.f. 1/3/2001. The goods at the installations had already been cleared from the refineries prior to 1/3/2001. As such, admittedly no duty liability of SED would arise against the same.

2. However, it is the Revenue's case that since after the introduction of SED, the price of the petroleum products was fixed at a higher rate by the Oil Coordination Committee, Ministry of Petroleum, it has to be held that the petroleum products sold from the installations on that higher price fixed amounted to recovery of SED from their customers. In as much as such SED, actually collected by the respondent from the customers, does not stand paid to the Revenue, as the products were cleared prior to 1/3/2001, the same is required to be deposited with the Revenue under the provisions of Section 11D.

3. Commissioner (Appeals), by relying upon the earlier decisions of the Tribunal in the same respondent's case has held that the provisions of Section 11D are not attracted in such a scenario. She has relied upon the following decisions of the Tribunal :-

**(i) Bharat Petroleum Corporation Ltd. vs. CCE, Raipur – 2002 (144) E.L.T. 672 ;**

**(ii) Bharat Petroleum Corporation Ltd. vs. CCE, Meerut – 2002 (146) E.L.T. 646 ;**

**(iii) HPCL vs. CCE, Aurangabad Final order No. C-III-978/WZB/2003 dated 11/06/2003 ;**

**(iv) Bharat Petroleum Corporation Ltd. vs. CCE, Nagpur – 2003 (158) E.L.T. 833 ;**

**(v) Laksmi Starch Ltd. vs. Union of India – 1993 (67) E.L.T. 769 (AP) ;**

**(vi) National Organics Chemicals Inds. Ltd. vs. CCE – 2000 (115) E.L.T. 70.**

Accordingly, the order of the original Adjudicating Authority confirming the demands was set aside.

4. The Revenue in their memo of appeal has put-forth the grounds that the orders relied upon by Commissioner (Appeals) do not stand accepted by the Revenue and appeal their-against stand filed before the higher appellate forum. At this stage, learned advocate appearing for the respondent brings to our

notice the facts that the earlier appeals filed by the Revenue against Tribunal's order stand dismissed by the Hon'ble Supreme Court. Reference in this regard is made to the reports appearing as **2004 (172) E.L.T. A133 (S.C.)** as also to **2003 (156) E.L.T. A326 (S.C.)**. Attention is also drawn to the latest decision of the Hon'ble Supreme Court appearing as **CCE, Meerut vs. Bharat Petroleum Corporation Ltd. – 2011 – TIOL - 99 – SC - CX**. While dealing with an identical issue, the Hon'ble Supreme Court has observed that the clearance of the product from their installation was not as a manufacturer but as a dealer. Thus, the assessee cannot be saddled down with any responsibility to pay the duty in terms of the provisions of Section 11D.

5. As the issue stands decided by the Hon'ble Supreme Court, we find no reasons to interfere in the impugned orders of Commissioner (Appeals). Revenue's appeal is accordingly rejected.

(Dictated and pronounced in open court)

**(Archana Wadhwa)**
**Member (Judicial)**

**(Mathew John)**
**Member (Technical)**

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