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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 **15/06/2012**

Appeal No. E/1829/2001 - EX[DB]

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

To :
HINDUSTAN PETROLIUM CORPN. LTD.,
VEDVYASPURI, PARTAPUR, MEERUT

Appellant

HINDUSTAN PETROLIUM CORPN.

Vs

Respondent

C.C.E. MEERUT I

I am directed to transmit herewith a certified copy of **Final order No. A/680 2012 EX[DB]** dated 05-6-12 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. MEERUT I
EXCISE CHOWK, UNIVERSITY
ROAD, MANGAL PANDEY
NAGAR, MEERUT - 250005.

2. Adv. / Consult SH. AMIT JAIN, ADV., B-6/10, S.J. ENCLAVE, N. DELHI-29

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. I

DATE OF HEARING/DECISION : 05/06/2012.

Excise Appeal No. 1829 of 2001

M/s Hindustan Petroleum Corporation Ltd. Appellant

Versus

CCE, Meerut – I Respondent

[Arising out of the Order-in-Original No. 32/Commr./Meerut-I/2001 dated 17/05/2001 passed by The Commissioner (Appeals), Central Excise, Meerut – I.]

Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri Rakesh Kumar, 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? :
2. Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether their Lordships wish to see the fair copy of the order? :
4. Whether order is to be circulated to the Department Authorities? :

Appearance

Shri Amit Jain, Advocate – for the Appellant.

Shri Bharat Bhushan, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No. A/680/2012-EX(BR)

Per. Shri Rakesh Kumar :-

The appellant have a storage depot at Meerut, which was receiving duty paid petroleum products from refineries/Bonded oil installations of various oil companies. The allegation against the appellant is that during the period from November 1998 to August 2000 there were several upward revisions of administered price of petroleum products resulting in increase in duty and at every time the appellant sold the pre-price increase stock at the rate applicable at the revises prices and thereby have recovered from the customers certain amount towards excise duty which had not been paid by them. It is on this ground that show cause notice dated 26/9/2000 was issued to the appellant under Section 11D of the Central Excise Act, 1944 for recovery of amount of Rs. 11,28,664/- alongwith interest and also for imposition of penalty on them under Section 11AC. This show cause notice was adjudicated by the Commissioner, Central Excise, Meerut vide order-in-original dated 17/5/01 by which the amount demanded under Section 11D was confirmed alongwith interest and beside this, penalty of equal amount was imposed under Section 11AC. Against this order of the Commissioner, this appeal has been filed.

2. Heard both the sides.

3. Shri Amit Jain, Advocate, the learned Counsel for the appellant, pleaded that the appellant are a dealer, not a manufacturer, that the petroleum products which were sold by them were not manufactured by them, that in view of this, the provisions of Section 11D are not applicable, that in this regard he relies upon the judgment of the Apex Court in the case of **CCE, Meerut vs. Bharat Petroleum Corporation Ltd.** reported in **2011 - TIOL - 99 - SC - CX**, that in view of this

judgment of the Hon'ble Supreme Court, the impugned order is not sustainable.

4. Shri Bharat Bhushan, the learned SDR defended the impugned order by reiterating the findings of the Commissioner in it.

5. We have carefully considered the submissions from both the sides and perused the records.

6. From the facts of this case, as narrated in the impugned order, it is clear that the petroleum products being marketed by the appellant depot had been manufactured by various oil companies. We also find that the provisions of Section 11D are applicable only to the person liable to pay the duty who in respect of any goods sold has collected from his customers on account in excess of duty assessed and paid on the goods. This provision obviously would not be applicable to a dealer who sells the duty paid goods purchased from other manufacturers. The appellant, a HPCL Depot were admittedly selling duty paid petroleum products purchased from different oil companies. Therefore, the provisions of Section 11D are not applicable to the appellant. The issue involved in this matter is also covered by the judgment of the Apex Court in the case of **CCE, Meerut vs. BPCL** (supra). In view of this, the impugned order is not sustainable. The same is set aside. The appeal is allowed.

(Dictated and pronounced in the open court)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

PK