IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No. E/73/2008

(Arising out of Order-in-Appeal No.57/CE(A)/GHY/07 dated 11.09.2007 passed by the Commissioner, Customs & Central Excise (Appeals), Guwahati)

M/s. Indian Oil Corporation Ltd.
Applicant (s)/Appellant (s)

Vs.

Commissioner of Central Excise, Shillong
Respondent (s)

Appearance:

Shri Chandan Kumar, Sr. Manager (Finance) for the Appellant (s)
Shri A.Roy, Suptd.(AR) for the Respondent (s)

CORAM:
Hon'ble SHRI JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
Hon'ble SHRI V.Padmanabhan, Member (Technical)

Date of Hearing/Decision:- 01.05.2018

ORDER NO. FO/76007/2018

Per Dr. Satish Chandra

1. The present appeal has been filed against the Order-in-Appeal No.57/CE(A)/GHY/07 dated 11.09.2007.

2. The brief facts of the case are that the appellant is engaged in the manufacturing of petroleum products. After the refining of the petroleum products, the product residuary left which is known as Low Sulphur Heavy Stock (LSHS). The appellant has used this LSHS for the generating of electricity. The department has demanded the excise duty. Being aggrieved the appellant has filed this appeal.

3. With this background we heard both sides and perused the record.

4. After perusal of record, it appears that the Commissioner (Appeals) in his order has observed:-

> " *The excisability of LSHS/LDO/Internal fuel used for generation of steam and electricity is disputed. This point was not raised before the lower authority and he has not recorded any finding in this regard. Accordingly the plea cannot be entertained at this stage"*

5. During the course of arguments the Ld. Counsel for the appellant has submitted that an identical set of facts in the subsequent year, the Original Authority has ordered in favour of the appellant. But the facts remains that during the period under consideration, the lower authority had neither adjudicated this point nor recorded any findings in this regard.

6. When it is so, then we set aside the impugned order and remand the matter to the original authority to decide the issue de novo, but by providing reasonable opportunity to the appellant. Fresh evidence, if need be, may be admitted as per law.

6. In the result, the appeal is allowed by way of remand.

(Dictated and pronounced in the Open Court)

S/d.
(Justice Dr. Satish Chandra)
President

S/d.
(V.Padmanabhan)
MEMBER (Technical)

ss