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

Date of Hearing/Order 15.6.2018

Appeal No. C/260/2010-DB

(Arising out of Order-in-Original No. KOL/CUS/PORT/28/2010 dated 19.5.2010 passed by the Commissioner of Customs (Port), Kolkata)

Indian Oil Corporation		Appellant
	Vs.	
CC, Kolkata		Respondent

Appearance

Shri Chandan Kumar DGM (F)	-	for the appellant
Shri S.N. Mittra, AC (AR)	-	for the respondent

CORAM: **Hon'ble Mr. P.K. Choudhary, Member (Judicial)**
Hon'ble Mr. Bijay Kumar, Member (Technical)

Final Order No. FO/A/76843/2018

Per Bijay Kumar :

This is second round of appeal before this Tribunal. In the first appeal, the Hon'ble CESTAT vide order No. A/302/KOL/2002 dated 19.2.2002 remanded the case to the original adjudicating authority for re-consideration of duty demand while the interest and penalty imposed were set aside. This case was again re-adjudicated by the adjudicating authority, which is the impugned order. In the said case, the ld. Adjudicating authority has held as under:

"62. I find that the observations of the then adjudicating authority were based on sufficient factual and circumstantial evidences, which have enough force. While deciding the case, then Commissioner of Customs (Port) had passed orders as under:

> *"for the reasons stated above after adjusting the duty of Rs. 92.61 crores already paid by the Noticee towards the duty actually payable, I confirm the demand of further duty of Rs. 6,29,17,00/-. The said amount be adjusted with the deposit of Rs. 15 crores made by the Noticee with the Custom House.*
>
> *The interest payable by the Noticee under Section 28 AB of the Customs Act, 1962, works out to Rs. 33,78,37,938/-. I order that the balance deposit of Rs. 8,70,83,000/- be adjusted with the above said interest. The Noticee shall pay the remaining amount of interest to the tune of Rs. 25,07,54,938/- forthwith.*
>
> *Having regard to the fact of suo moto payment of duty by the Noticee before the Adjudication Order has been passed and in some cases even before the Show Cause Notice was issued, I take a lenient view so far as penalty is concerned, I impose a penalty of Rs. 50 lakhs (Rupees fifty lakhs) only on the Noticee, under Section 112(a) of the Customs Act, 1962."*

The adjudicating authority in the impugned order has held:

"Whereas I do not find enough reasons to disagree with the findings and orders of earlier Commissioner, I am left with limited option to re-consider the duty amount only. Accordingly, I am

> constrained to hold the findings of earlier Commissioner."

2. The issue involved in this case is that the importer is, M/s Indian Oil Corporation Ltd. a public sector oil company, who was importer for crude oil petroleum in respect of several public sector oil companies. They used to import the goods and distribute the same among the various oil companies as per the policy of the Government of India. The assessments were kept provisional on the ground that the consignment were being imported in mix of different variety of crude oil, and therefore, the appellants were not in a position to submit full information about the price and other costs as such freight and insurance at the time of import. Accordingly, the assessments were carried out on the provisional basis and the appellant has executed the bond covered their liability if any on the finalisation of the provisional assessment.

3. Against this background, we have heard ld. Advocate, on behalf of the appellant, who has stated that in the impugned order, the adjudicating authority has not followed the directions given by the Hon'ble CESTAT, while remanding the case so as to consider the evidences and pass the appropriate order. Instead of appreciating the evidence, which were tendered while adjudicating the case, the ld. Adjudicating authority has

reproduced the copy of earlier order in verbatim and therefore, completely ignored the direction of Hon'ble CESTAT while re-adjudicating the case.

4. On the other hand, ld. AR reiterated the grounds contained in the impugned order and supported the order of adjudicating authority.

5. We have considered the rival submissions and also perused the case records.

6. We have seen the impugned order critically, and after going through we find that whatever has been stated by the ld. Advocate on behalf of the appellant is fully correct. The ld. Adjudicating Authority has not examined the documents, which he was supposed to consider in terms of specific remand order passed by this Tribunal. Not only that, he has held in the order that he is constraint to reproduce the order passed by his predecessor which he says is a reasoned one. In the other word, the ld. Adjudicating Authority has not considered the specific direction of this Tribunal and acted above the findings of the Tribunal, which he was not competent to do. This itself is in defiance of the order passed by the Tribunal and is a glaring example of non-application of mind and defiance of order from

the higher judicial forum. As the case is very old pertaining to the year 1994 to 1996, no purpose would be served by remanding this case once again to the adjudicating authority for fresh consideration. Appellant cannot be made to suffer for the misadventure on part of the Adjudicating Authority.

7. Accordingly, we set aside the impugned order and allow the appeal with consequential benefit, if any.

(Pronounced in Court)

Sd/	Sd/
(P.K. Choudhary)	(Bijay Kumar)
Member (Judicial)	Member (Technical)

RM