

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA**

Appeal No.E/667/2009

(Arising out of Order-in-Original No.19/MP/Auukt/2009 dated 31.08.2009 passed by the Commissioner of Central Excise & Service Tax, Patna)

M/s. I.O.C.L

...APPELLANT(S)

VERSUS

Commissioner of Central Excise & Service Tax, Patna

...RESPONDENT (S)

APPEARANCE

Shri Romi Agarwal, Asstt. Manager for the Appellant
Shri S.S.Chattopadhyay, Suptd.(AR) for the Respondent.

CORAM:

HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
Hon'ble SHRI V.Padmanabhan, Member (Technical)

Date of Hearing/Decision : 30.11.2018

ORDER NO.FO/A/77032/2018

Per Bench :

The present appeal is against Order-in-Original No.19/MP/Auukt/2009 dated 31.08.2009. The appellant is engaged in the manufacture of various petroleum products at Barauni. The dispute pertains to Motor Spirit and High Speed Diesel cleared from Barauni refinery. The appellant cleared the products to its own depots by payment of duty at the rate specified per kilo liter for volumes at ambient temperature. However, in respect of their sales to other oil marketing companies viz. HPCL as well as BPCL, they charged the same price per liter based on notional volume of the products by converting the volume at room temperature to the volume at 15°C. As a result, the volume of goods supplied got reduced and this resulted in lesser price than the price at which the goods were supplied by the appellant to its

own depots. The department took the view that by adopting the above procedure, the appellant have undervalued their products cleared to HPCL and BPCL. Accordingly, show cause notice was issued for demanding the differential duty. The impugned order was issued confirming the demand of Central Excise duty alongwith interest and penalties. Hence, the present appeal.

2. The appellant is represented by Shri Biswajit Mukherjee, Advocate and Revenue is represented by Shri S.S.Chattopadhyay, Suptd. (AR).

3. Ld. Advocate submitted on behalf of the appellant that the appellant had no intention to evade central excise duty. While conceding that the volume of the petroleum products at 15°C will be lower than the volume of the same products at room temperature, he submitted that the contracted price with BPCL and HPCL were based on the volume at 15°C. He pointed out that the price of the petroleum products contracted with BPCL and HPCL (at 15°C) was more per kilo liter than the price adopted for sale at natural temperature through their depots. Accordingly, he submitted that there will be no net loss of revenue.

4. Ld. Advocate also submitted that the identical dispute in respect of the appellant's refinery at Ambala had came up before the Delhi Bench of the Tribunal and was decided in their favour by Final Order No.967-969/2012-EX dated 13.08.2012. He further submitted that the above decision of the Tribunal has been affirmed by the Hon'ble High Court of Punjab and Haryana vide their Central Excise Appeal No.61/2013 dated 21.07.2016. He prayed that the present appeal may also be allowed following the above decision of the Delhi Bench.

5. Ld. DR justified the impugned order.

6. The dispute in the present case concerns the value adopted for payment of duty in respect of two petroleum products viz. Motor Spirit and High Speed Diesel. The appellant paid duty on the quantity of goods cleared and sold through their own depots, on the basis of the price per kilo liter for volume at ambient temperature. However, in respect of clearances made to HPCL and BPL, the volume of goods cleared were shown at 15°C and duty was paid on such quantity of goods cleared. Since the volume of goods at 15°C will be lesser than the volume of the same products at ambient temperature, the department proceeded by taking the view that the appellant has short paid the duty. This view has been challenged by the appellant with the submission that the contracts executed with HPCL and BPCL were with prices fixed for volume determined at 15°C.

7. We note that an identical dispute pertaining to the appellant's refinery at Ambala was before the Delhi Bench of the Tribunal and has been decided in favour of the appellants through the final order mentioned (supra). The observations of the Tribunal in that case are reproduced below:

"6. We have considered the rival contentions and perused the records. It is undisputed that the appellant has supplied goods to other oil manufacturing companies on payment of excise duty calculated on transaction value of goods supplied at 15°C.

7. Thus only question for determination is whether or not by converting the actual volume of oil at room temperature to notional volume at 15°C for the purpose of fixing the price to be charged by other oil manufacturing companies amounts to undervaluing the product to evade excise duty?

8. In order to find answer to the above question, it would be useful to have a look on Section 4(1) of the Central Excise Act, which is reproduced thus:-

4. VALUATION OF EXCISABLE GOODS FOR PURPOSES OF CHARGING OF DUTY OF EXCISE.

- (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall-

(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of goods are not related and the price is the sole consideration for the sale, be the transaction value;

(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

[Explanation.- For the removal of doubts, it is hereby declared that the price-cum-duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum-duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods.]

9. On plain reading of the above, it is clear that for the purpose of calculating the excise duty chargeable, the price charged if it is sole consideration for the sale, would be the transaction value. Admittedly, in the instant appeals, the goods have been cleared on payment of excise duty as per the price declared in the invoices. It is not the case of the department that other manufacturing companies to who the oil was supplied at the rate based on the volume at 15°C are the related parties. It is also not the case of the Revenue that invoice price was not the sole consideration for sale or the appellant/assessee has received any other additional consideration apart from the declared sale price. Thus, in our considered view, the appellant has rightly paid the excise duty as per transaction value in terms of Section 4 of the Central Excise Act and there is no justification for allegation of under-valuation of the goods with a view to evade excise duty."

8. It is further seen that the above decision of the Tribunal has been affirmed by the Hon'ble High Court of Punjab and Haryana at Chandigarh. In view of the above, we are of the view that the impugned order is not sustainable. Hence, it is set aside and the appeal is allowed.

(Order Portion have already been Pronounced in the Open Court)

S/d.

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

S/d.

(V.Padmanabhan)
MEMBER (TECHNICAL)