IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA
Appeal No. E/700/2010

(Arising out of Order-in-Original No. 13/Commissioner/CE/Haldia/Adjn/2010 dated 28.07.2010 passed by the Commissioner of Central Excise, Haldia Commissionerate, Kolkata)

Indian Oil Corporation Ltd.

….Appellant (s)

Vs.
Commissioner of Central Excise, Haldia

….Respondent (s)

<u>Appearance:</u>
Shri Romi Agarwal, Asst. Manager (Fin.) for the Appellant (s)
Shri A. Roy, Suptd.(AR) for the Respondent(s)

CORAM:
HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER(TECHNICAL)

Date of Hearing:- 28.02.2019
ORDER NO. FO No. 75398/2019

<u>PER BENCH</u>

The present appeal is directed against the Order-in-Original No. 13/Commissioner/CE/Haldia/Adjn/2010 dated 28.07.2010. The appellant has an Oil Refinery at Haldia. The dispute is pertaining to the period from September, 2007 to December, 2007 during which they removed certain goods without payment of duty for export. The goods cleared were Furnace Oil as well as Bitumen. Since the proof of export of such goods was not submitted within the prescribed period, the Department proceeded to demand the duty payable on such goods. The Show Cause Notice issued in this regard dated 30.09.2008 was decided by Adjudicating Authority by issue of the impugned order dated 28.7.2010. In this order, demand of duty was confirmed along with interest. Further, penalty was also imposed on the appellant under Rule 25 of Central Excise Rules, 2002.

2. Shri R. Agarwal, Assistant Manager (Finance) appeared on behalf of the appellant and Shri A. Roy, Superintendent (AR) appeared for the Revenue.

3. On behalf of the appellant it is submitted that proof of export could not be submitted before the Original Authority in time. However, he submitted that the certificates from the jurisdictional Superintendent, Incharge of Haldia have been obtained and submitted now before the Tribunal. The said certificate dated 15.03.2018 is recorded. The certificate covers both furnace oil, which has been exported as well as Bitumen which was cleared within the Refinery for manufacture of "Crumb Rubber Modified Bitumen" (CRMB). He submitted that in respect of Bitumen it has been wrongfully mentioned that it was cleared for export but was cleared within the Refinery for which benefit of captive consumption is available under Notification No. 67/95. Finally he submitted that the demand raised may be set aside.

4. The Ld. D.R. justifies the impugned order.

5. He submitted that relevant proof of export was not made available before the Adjudicating Authority and the same may be remanded to him for verification.

6. After hearing, both sides and perusal of the appeal records; we note that payment of Central Excise has been ordered for non-submission of proof of exports for certain quantities of Bitumen as well as Furnace oil. In terms of the certificate dated 15.3.2018 submitted by the Learned representative of the appellant, it is seen that the jurisdictional Superintendent, Central Excise has certified the quantity of Bitumen has been cleared within the Refinery for CRBM plant. This is covered under Notification No. 67/95 and entitled to exemption for

captive consumption. Further, export of the disputed quantity of furnace oil has also been certified. We are of the view that the entire quantity of Furnace Oil and Bitumen stands accounted for.

In view of the above discussions we set aside the impugned order and allowed the appeal.

(Dictated and pronounced in the open court.)

(V. Padmanabhan)
Member(Technical)

(P.K. Choudhari)
Member(Judicial)

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