**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA**
**EASTERN ZONAL BENCH: KOLKATA**
**Appeal No. E/330/2010**

(Arising out of Order-in-Appeal No. 03/SH/CE(A)/GHY/10 dated 11/02/2010 & 03/SH/CE(A)/GHY/11 dated 25/01/2011 passed by the Commissioner of Customs & Central Excise (Appeals), Guwahati)

Numaligarh Refinery Ltd.

….Appellant (s)

**Vs.**

Commissioner of Central Excise, Shilong

….Respondent (s)

**Appeal No. E/408/2011**

Commissioner of Central Excise, Shilong

….Appellant (s)

**Vs.**

Numaligarh Refinery Ltd.

….Respondent (s)

Appearance:
Shri Ravi Raghavan, Adv. for the appellants
Shri T. Mondal, AC (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. 75404 & 75410/2019

**PER BENCH**

The appeal No. E/330/2010 is filed against Order in Appeal No. 03/SH/CE(A)/GHY/10 dated 11/02/2010 and the Appeal No. E/ 408 /2011 is filed by Revenue against Order-in-Appeal No. 03/ SH/ CE(A) / GHY/11 dated 25/01/2011. Since the issue involved in both appeals is common, both are taken up for decision in this common order.

2. M/s. Numaligarh Refinery Ltd ('NRL' in short) is engaged in the manufacture of petroleum products including Naphtha. The petroleum products were covered by the Warehousing provisions which allowed transfer of goods without payment of duty. However, the facility of warehousing was withdrawn w.e.f. 06/09/2004 by Notification No. 17/2004-CE(N.T.) dated 4.9.2004 NRL was clearing Naphtha to M/s. NTPC as well as M/s. Oswal Chemicals & Fertilizers ('OCFL') through Bharat Petroleum Corporation Ltd., ('BPCL') whose depots were located at Mathura and Banthra. Notification No. 6/2002-CE dated 01.03.2002 (Sl. No. 22), extended benefit of 'nil' rate of duty to Naphtha when cleared for use in the manufacture of ammonia and fertilizer. The benefit was subject to satisfaction of condition number 4 & 5 of the said Notification. Upto 03.09.2004, when the Warehousing Provisions were available, NRL was clearing Naphtha to OCFL without payment of duty through BPCL as Warehouse to Warehouse transfer. After the withdrawal of the Warehousing facilities they cleared Naphtha to OCFL on payment of duty. After such clearances, NRL claimed the benefit of Notification No. 6/2002-CE dated 01.03.2002 (Sl. No. 22) and filed refund claim for the duty paid during the period from 4.9.2004 to 30.09.2004. The refund claim was rejected by the original authority vide his dated 30.08.2008 and also by the Commissioner (Appeals) by the Impugned Order. Appeal No. E/330/2010 has been filed by NRL against the rejection of the refund claim.

3. The benefit of the Notification 6/2002-CE dated 01.03.2002 was not claimed by NRL and duty paid clearance of Naphtha was made to OCFL also during the subsequent period from 19.01.2005 to

30.01.2005. In this case, Original Authority rejected the refund claim by his order dated 6.08.2003. However, the appeal filed against such rejection before the Commissioner (Appeals) was allowed and He ordered payment of refund. Such grant of refund is challenged by Revenue in the Appeal No. E/408/2011.

4. The benefit of Notification No. 6/2002-CE dated 01.03.2002 (Sl. No. 22) has been claimed by NRL for clearance of Naphtha to OCFL. OCFL procured such Naphtha for use within their factory in the manufacture of fertilizers. The benefit under Notification is contingent upon satisfaction of conditions 4 & 5 specified in the Notification These conditions are reproduced below for ready reference.

> *"4. The exemption shall be allowed if it has been proved to the satisfaction of an officer not below the rank of the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction that such goods are cleared for the intended use specified in Column (3) of the Table.*
> *5. Where such use is elsewhere than in the factory of production, the exemption shall be allowed if the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, is followed.* "

5. As per the above conditions the benefit of Naptha at Nil rate of duty will be available under the said Notification subject to satisfaction of the procedure laid down in Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules ('Rules' for short), 2001. This condition is required to be satisfied in

view of the fact that the use of Naphtha for manufacture of fertilizers is in a place outside NRL.

6. M/s. NRL is represented by Shri Ravi Raghavan, Adv. and Revenue is represented by Shri T. Mondal, AC (AR).

7. With the above background, heard both sides. The arguments on behalf of NRL are summarised below:-

(i) After the withdrawal of the Warehousing provisions, w.e.f. 6.09.2004, M/s. NRL approached Jurisdictional Commissioner for permission for clearance of Naphtha without payment of duty to M/s. OCFL. The said permission was granted on 30.09.2004. In the mean time, NRL cleared Naphtha to OCFL without availing the benefit of the notification but on payment of duty.

(ii) It was submitted that the Naphtha was cleared through the Depots of the BPCL to OCFL; However, at the time of clearance from the Refinery it was known that such Naphtha was intended for OCFL for use in the manufacture of Fertilizers.

(iii) The Naphtha received in OCFL was duly accounted for as required under the provisions of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001. The Jurisdictional Superintendent Incharge of OCFL has issued a certificate to the effect that all consignments of Naphtha received in OCFL through BPCL were duly accounted for and utilized in the manufacture of fertilizers. Hence, it was submitted that the benefit of 'nil' rate of duty cannot be denied.

(iv) The Departmental Authorities in Appeal No. E/330/2010 have denied such refund by observing that the conditions of the Rules have not been satisfied. In this connection he submitted that there is no dispute that the Naphtha has been utilized for the manufacture of fertilizer and the same has been established by verification at the recipient's factory.

(v) NRL have also provided the stock statement prepared by BPCL for the goods received from NRL and subsequently cleared to OCFL. Such statement have been prepared and checked on the basis of registers maintained by BPCL.

(vi) Finally he submitted that since there is no dispute that the conditions of the Notification No. 6/2002-CE dated 01.03.2002 (Sl. No. 22) stands satisfied, the benefit of notification cannot be denied.

(vii) In respect of the appeal No. E/408/2011 filed by the Department, for the subsequent period, the Lower Authorities have extended the benefit of 'nil' rate of duty and granted the refund on the basis of similar verification by the jurisdictional authorities Incharge of OCFL. As such he submitted that this order dated 25.01.2011 merits no interference.

8. The Ld. Representative of the Department justifies the order rejecting the refund. He submitted that the refund granted for the subsequent period also was erroneous, in view of the fact that the conditions specified in the Rules meant for removal of goods at concessional rate of duty have not been satisfied.

9. Heard both sides at length and perused the appeal records.

10. The dispute is consequent upon the disruption which was a result of the withdrawal of the Warehousing provisions which was earlier extended to the manufacturers of petroleum products upto 05.09.2004. During the Warehousing period Naphtha was being cleared without payment of duty to customers including OCFL for use in the manufacture of fertilizers. After the withdrawal of such facility, NRL approached the Jurisdictional Authority for permission to avail the benefit of 'nil' rate of duty under Notification No. 6/2002-CE dated 01.03.2002 (Sl. No. 22). The permission was granted by the Commissioner vide his letter dated 30.09.2004. However for the period of dispute the appellant cleared Naphtha on payment of duty and have subsequently claimed the refund of such duty. The refund claim stands claimed on the fact that the Naphtha has been used by OCFL for the manufacture of Fertilizers. The Departmental Authority has denied such refund for the initial period from 4.9.2004 to 30.09.2004 being Appeal No. E/330/2010. However, for the refund claim for the subsequent period from 19.01.2005 to 30.01.2005, stands allowed and the same is challenged by Revenue in Appeal No. E/408/2011.

11. The conditions specified in the Sl. No. 22 of the Notification No. 6/2002-CE are meant to ensure that Naphtha cleared from Refinery and received in the other factory is used in the manufacture of fertilizers. Towards this purpose various conditions as prescribed in the Rules for required to be satisfied. Though the lower authorities, in the initial period have held that the conditions as per Rules have not been satisfied, there is no dispute to the fact that Naphtha received by OCFL have been utilised for the manufacture of fertilizers. The receipt of

Naphtha from NRL through the depots of BPCL is evidenced by the Registers maintained at the end of OCFL. The use of naphtha received in the manufacture of fertilizers is evidenced from such registers. This also stands certified by the Jurisdictional Superintendent after verification of such records. The correlation of the supplies made by the NRL, which was accompanied by invoices of BPCL, also stands established on the basis of stock statement prepared by BPCL. Since the receipt of Naphtha in OCFL and use thereof for manufacture of fertilizer are established, we are of the view that the benefit of Notification No. 6/2002-CE dated 01.03.2002 (Sl. No. 22) cannot be denied to NRL. Consequently we set aside Order-in-Appeal dated 11.02.2010 and allowed Appeal No. E/330/2010:

12. For the reasoned discussions above, we find no infirmity in the impugned order dated 25.01.2011 which is sustained and Appeal No. E/408/2011 filed by the Revenue is rejected.

(Dictated and pronounced in the open court.)

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| **(V. Padmanabhan)** | **(P.K. Choudhari)** |
| **Member(Technical)** | **Member(Judicial)** |

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