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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.898 of 2011

(Arising out of Order-in-Original No.38/MP/Ayukta/2011 dated 11.08.2011 passed by Commissioner of Central Excise, Patna.)

Commissioner of Central Excise, Patna
(3rd Floor, C.R.Building (Annexe), Birchand Patel Path, Patna-800001.)

...Appellant

VERSUS

M/s.Indian Oil Corporation Limited

.....Respondent

(Barauni Refinery, Barauni, Begusarai, Bihar.)

APPEARANCE

Shri A.K.Biswas, Authorized Representative for the Appellant (s) /Revenue
NONE for the Respondent (s)

CORAM: HON'BLE SHRI ANIL CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI SANJIV SRIVASTAVA, MEMBER(TECHNICAL)

FINAL ORDER NO. 75037/2021

DATE OF HEARING : 9 February 2021
DATE OF DECISION : 9 February 2021

ANIL CHOUDHARY :

Heard the learned Authorized Representative for Revenue Appellant.

2. The Respondent assessee is absent and have filed a time petition. As the appeal is of the year 2011 and the matter lies in a narrow compass, we reject the time petition and take up the appeal for hearing *ex parte*.

3. Heard the learned Authorized Representative for the Revenue Appellant and perused the records.

4. According to the findings in the impugned order, there was a dispute relating to input credit for the period 01.04.2009 to 31.03.2010 by M/s.Indian Oil Corporation, Barauni, which had received the input namely MT HDT Feed classifiable under Central Excise Tariff sub-heading 27 10 19 90 from M/s.Bongaigaon Refinery & Petrochemicals Ltd, Bongaigaon for manufacture of HSD (High Speed Diesel). HSD is classifiable under 27 10 19 30. The Respondent Assessee had availed Cenvat credit to the tune of Rs.8,55,80,055/-. The Show Cause Notice was adjudicated on contest and the demand was confirmed disallowing the Cenvat Credit. Further penalty of Rs.10.00 Lakhs was imposed under Rule 15(1) of Cenvat Credit Rules, 2004.

5. Revenue have preferred this appeal on the grievance that penalty should have been imposed 100% under Rule 15(2) of Cenvat Credit Rules, 2004 read with Section 11AC as there is element of suppression on the part of the assessee as they have not come out with full and proper details before the Revenue authority at first instance. It was only after persuasion and 5-6 reminders given, that the details were submitted to the Revenue authority.

6. From perusal of records it appears that it was one of the defence of the assessee that HDP Feed cannot be classified as HSD even if it conforms to the specification laid down under IS 1460: 2000 as the said specification is obsolete and replaced by IS 1460: 2005. It was further contended that HDP Feed is not marketable as such and HDP Feed is an intermediate input/product which is further processed for producing HSD as per specification IS 1460: 2005. Further section 6 of Essential Commodities Act, 1955 provides that any order made under section 3 of the said Act shall have the over-riding effect notwithstanding anything in consistent therewith contained in any enactment, other than the said Act. Accordingly under the Essential Commodities Act, a specification of HSD prescribed by Notification, issued by the Ministry of Petroleum and Natural Gas shall prevail. It was also contended that the SCN is bad for relying on a stale specification and not placing reliance on the current specification.

7. Having considered the contentions of Revenue and the assessee we find that in the facts and circumstances, no case of imposition of penalty under Rule 15(2) of Cenvat Credit Rules, 2004 is made out. Further cogent explanation given by the assessee have not been found wrong in the impugned adjudication order. It has been held by the Hon'ble Bombay High Court in Commissioner of Central Excise, Pune-II Vs. Ajinkya Enterprises [2013 (294) E.L.T. 203, that payment of duty on output/finished goods amounts to reversal of Cenvat credit taken on inputs. In this view of the matter, we find no merits in this appeal by Revenue and accordingly, the same is dismissed.

(Dictated and pronounced in the open Court.)

SD/
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

SD/

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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