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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.334 of 2009

(Arising out of Order-in-OriginalNo.06/MP/Ayukt/2009 dated26.02.2009 passed by Commissioner of Central Excise& Service Tax, Patna.)

M/s.Indian Oil Corporation Limited
(2, Gariahat Road (S), 7th Floor, C-Wing, Kolkata-700068.)

...Appellant

VERSUS

Commissioner of Central Excise, Patna

.....Respondent

(Central Revenue Building, 3rd Floor, Birchand Patel Path, Patna, Pin-800001.)

WITH

Excise Appeal No.533 of 2009

(Arising out of Order-in-Original No.15/MP/Ayukt/2009 dated 30.06.2009 passed by Commissioner of Central Excise& Service Tax, Patna.)

M/s. Indian Oil Corporation Limited
(2, Gariahat Road (S), 7th Floor, C-Wing, Kolkata-700068.)

...Appellant

VERSUS

Commissioner of Central Excise, Patna

.....Respondent

(Central Revenue Building, 3rd Floor, Birchand Patel Path, Patna, Pin-800001.)

APPEARANCE

Shri B.Mukherjee, Advocate & Shri Hemant Karnani, Senior Manager for the Appellant (s)
Shri S.Mukhopadhyay, Authorized Representative for the Respondent (s)

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

FINAL ORDER NO. 75382-75383/2022

DATE OF HEARING : 13 June 2022
DATE OF DECISION :13 June 2022

P.K.CHOUDHARY :

The present appeal has been filed against the Orders-in-Original No. 06/MP/Ayukt/2009 dated 26/02/2009 and 15/MP/Ayukt/2009 dated 30/06/2009. The Appellant is engaged in storage/warehousing of non-duty paid various petroleum products in their Depot situated at Raxaul. For the purpose of export of petroleum products to Nepal, various petroleum productswere transferred by rail by Indian Oil Refineries situated at Barauni/Panipat/Haldia to the Indian Oil Warehouse at Raxaul. Such transfer happened under bond and from the Warehouse at Raxaul, the petroleum products were exported to Nepal. The Department noticed that there was transit loss in the movement of petroleum products from various IOCL Refineries to Raxaul.

2. After issuance of Show Cause Notice, the Adjudicating Authority ordered payment of duty on the quantum of petroleum products lost in transit on IOCL Raxaul Depot. In addition, equivalentpenalties were also imposed.

3. The Ld. Advocate of the Appellant submitted that certain amount of transit loss is inevitable taking into account, the nature of the petroleum products, which is volatile. Realizing the nature of the goods, the Board had issued a Circular dated 30/10/1985 in which it was clarified that transit loss upto 1% was permissible. He further submitted that the Adjudicating Authority has declined to give the benefit of 1% transit loss by taking the view that the circular is not applicable for warehousing procedure but is meant for some other situation/procedure of receiving petroleum products. The Ld. Counsel further submitted that the IOCL refineries were already paying the applicable duty when the transit loss exceeded 1%. He also submitted that this Tribunal in the Appellant’s own case vide Final Order No. 77147-77148/2018 dated 12.12.2018 had allowed transit loss upto 1%. He also submitted that in the Appellant’s own case vide OIA No. 203-204/Pat/C.Ex./Appeal/2012 dated 11.10.2012 , the Commissioner (Appeals) had held that with respect to any loss that occurs before the

receipt of goods by the Consignee (IOCL Raxaul Depot), the responsibility lies with the Consignor (IOCL Refineries).

4. The Ld. Authorized Representative for the department justified the findings of the Lower Authority and contended that the goods were cleared from the refinery without payment of duty under Rule 20 of the Central Excise Rules. Since there was short receipt of the goods at the bonded Warehouse, he submitted that the Appellant was liable for payment of duty on such loss of goods.

5. Heard both sides and perused the appeal records.

6. We observe that the transit loss had happened during the movement of the petroleum products from their Refinery situated at Barauni/Haldia/Panipat to the warehouse situated at Raxaul. Keeping in view the nature of the goods which are volatile, some transit loss is inevitable. The question therefore to be decided is whether such transit loss can be condoned, or the Appellant is required to make good the duty foregone on such goods. Keeping in view the nature of the goods, the Board had issued a circular as early as 30/10/1985 in which it has been clarified that transit loss upto 1% was permissible. For ready reference, the relevant portion of the circular is reproduced below : -

> **"3. Secondly, they may be allowed to transfer non-duty-paid all brought in railway wagon tanks, to a bonded storage tank and determine the transfer quantity by taking dips in the storage tank before and after the transfer, on conditions that duty on transit shortages in excess of 1% would be paid. The dip measurements, of tank lorries at the point of dispatch and the storage tank at the destination should be obtained only after sufficient settling time is given prior to be taking of dip reading of storage tank."**

7. From the impugned order, it is seen that the Adjudicating Authority had declined to grant the benefit of the circular citing the reason that the Warehousing Provision for petroleum products has since been withdrawn and the circular is applicable only for other situations. In this regard, we note that the Warehousing Provision for petroleum products was withdrawn in 2004 but export warehousing facility to petroleum products continued. We also note that this Tribunal had allowed such transit loss to the extent of 1% in several appeals preferred by the Appellant as reported in the case of Indian Oil Corporation Ltd. Vs. Commissioner of C. Ex., Vadodara [2007 (220) E.L.T. 260 (Tri.-Ahmd.)], Indian Oil Corporation Ltd. Vs. Commissioner of C. Ex., Vadodara [2010 (249) E.L.T. 132 (Tri. Ahmd.)]. Similar issue was also decided by the Hon'ble Bombay High Court in the case of Hindustan Petroleum Corporation Vs. Union of India [2012 (286) E.L.T. 505 (Bombay).

8. We find that the demand in respect of such transit loss which is not in excess of 1% may be condoned, in view of the circular dated 30^{th} October 1985issued by the Board. It is the claim of the Appellant that wherever transit losses were more than 1%, they have already discharged the duty liability, which has not been disputed by the Department.

In view of the above discussions, the impugned orders are set aside and the appeals are allowed with consequential relief as per law.

(Operative part of the order was pronounced in the open Court.)

Sd/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

Sd/
(P.ANJANI KUMAR)
MEMBER (TECHNICAL)

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