IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Excise Appeal No.97 of 2012

(Arising out of Order-in-Appeal No.185/Pat/CEX/Appeal/2011 dated 11.11.2011 passed by Commissioner of Central Excise & Service Tax, Patna)

M/s Indian Oil Corporation Limited
Forbesganj, Depot, Forbesganj

Appellant

VERSUS

Commissioner of CGST & Excise, Patna
C.R.Building, Birchand Patel Path, Patna-800001

Respondent

APPERANCE :

Ms.Shreya Mundhra, Advocate for the Appellant
Shri P.K.Ghosh, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO……75630/2023

DATE OF HEARING : 02 .06.2023
DATE OF DECISION : 02 .06.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order.

2. The facts of the case are that the appellant is a Public Sector Undertaking and is engaged in marketing of petroleum products, namely, MS, HSD, which are sold to the RPO on principal to principal basis. In the course of its business, the appellant facilitated the supply by the retail outlets by providing infrastructure such as, tank, pumps, building etc. based on the requirements of such RPO. For this purpose, the appellant recovers rent from such RPO dealers to whom the facility has been provided under the nomenclature of SSLF under a separate

agreement. The said SSLF charges are fixed by the Oil Co-ordination committee of the Ministry of Petroleum.

2.1 The adjudicating authority issued four notices to the appellant for the period from October, 1997 to December, 2002 and June 1, 2003 to July 31, 2003 to call SSLF, as to why the SSLF so recovered by the appellant is not includible in the assessable value for the purposes of levy of excise duty.

2.2 The matter was adjudicated and the demand of duty was confirmed.

2.3 Against the said order, the appellant is before us.

3. The ld.Counsel for the appellant, submits that in their own case as reported in 2007 (209) ELT 237 (Tri.-Chennai), this Tribunal held that the SSLF is not includable in the transaction value and the same was taken by this Tribunal in the case of BPCL Vs. Commissioner reported in 2003 (158) ELT 361 (Tri.-Bang.). Against the same, the appeal filed by the Revenue has been dismissed by the Hon'ble Supreme Court in 2004 (173) EELT A193 (SC). Therefore, the impugned order is to be set aside.

4. Heard the parties and considered the submissions.

5. We find that in the appellant's own case as reported in 2007 (209) ELT 237 (Tri.-Chennai), this Tribunal has held as under :

> "***2.*** *The short question arising for consideration in this appeal is whether the amount collected by the appellants from their dealers towards 'Service Station Licence Fee' (SSLF) for the period of dispute (July and August, 2001) is to be included in the assessable value of the petroleum products supplied to such dealers during the said period. SSLF collected by the assessee*

from their dealers was in the nature of rental on land, tanks, pumps and kiosks installed by the former for the benefit of the latter. A similar fee was collected by M/s. Hindustan Petroleum Corporation Ltd. (HPCL, for short) from some of their dealers and the same was held to be not includible in the assessable value of the petroleum products supplied by M/s. HPCL to such dealers, by the Commissioner (Appeals), Mangalore in Order-in-Appeal No. 475/2003-C.E.; dated 23-12-2003, a copy of which has been produced by learned Counsel, who submits that the department has accepted the said Order-in-Appeal. Though the department filed appeal against the said order of the appellate Commissioner, they later withdrew the appeal as evidenced by Final Order Nos. 401-404/2005 passed by the Tribunal's South Zonal Bench, Bangalore (copy produced by learned Counsel). Learned SDR has acknowledged the said final order of the Tribunal."

And the same was taken up by this Tribunal in the case of BPCL (supra), wherein it has been held as under :

"***4.*** *…………………. It is clear from the facts of the case that leasing out of outlets and sale of MS and HSD oil are separate transactions between the appellants and their buyers of MS and HSD. This is clear from the fact that no licence fee is levied from the dealers who have not leased out the outlets of the appellants. In the circumstances, it has to be held that licence fee, which is for a different transaction and consideration than the sale of MS and HSD cannot form part of the assessable value of MS and HSD. The issue also is settled by the decisions relied on by the appellants."*

The said order has been affirmed by the Hon'ble Supreme Court.

6. Therefore, we hold that the issue is no more res integra. Accordingly, the SSLF is not includable in the assessable value.

7. In this regard, we do not find any merit in the impugned order and the same is set aside.

8. In the result, the appeal is allowed with consequential relief to the appellant, if any.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)

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