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

Excise Appeal No. 14 of 2012

(Arising out of the Order-in-Appeal No. 95/Kol-VII/2011 dated 14.10.2011 passed by Commissioner of Central Excise (Appeal-I), Kolkata.)

M/s Bharat Petroleum Corporation Ltd.,
Budge Budge Installation, Budge Budge, District-24, Parganas (South), West Bengal.

...Appellant (s)

VERSUS

Commissioner of Central Excise, Kolkata.
169, A.J.C. Bose Road, Bamboo villa 4th Floor, Kolkata-700014.

. ...**Respondent(s)**

APPERANCE :

Dr. Samir Chakraborty, Sr. Advocate & Shri Abhijit Biswas, Advocates for the Appellant
Shri K. Chowdhury, Authorized Representative for the Respondent

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

FINAL ORDER No.76376/2023

DATE OF HEARING : 09.08.2023
DATE OF DECISION : 09.08.2023

PER K. ANPAZHAKAN :

The instant appeal is filed against the Order-in-Appeal dated 14.10.2011 passed by the Commissioner of Central Excise (Appeal-I), Kolkata ("the impugned order"), whereby the Commissioner (Appeal) upheld the adjudication order dated January 30, 2009 passed by the Additional Commissioner of Central Excise, Kolkata-VII, (in short, "the adjudication order"). In the said order, the adjudicating authority has confirmed the duty demand of Rs. 21,12,899/-, alleged to have been short paid by the Appellant in respect of the goods cleared to Nepal, by invoking the proviso to Section 11A of the Central Excise Act, 1944 (in short "the Act"), along with interest thereon under Section 11AB of the Act and imposed penalty equal to the duty involved in terms of Rule 25 of the Central Excise Rules, 2002 (in short, "the said Rules") read with Section 11AC of the Act .

2. Brief facts of the case are that the Appellant has a lubricant plant at Budge Budge, in the State of West Bengal, wherein they were manufacturing lubricating oil. The appellant was also registered as a dealer for storing of duty paid goods in accordance with the provisions of the said Rules. The Appellant were following the procedures and formalities required to be followed by a registered dealer for storing of duty paid goods. The appellant issued cenvatable invoices with cross reference of invoices of manufacturers of subject goods and filed quarterly returns under the Rule 9(8) of the said Rules.

3. During the period 31st March, 2003 to 23rd January 2008 (hereinafter referred to as "the said goods") the Appellant exported lubricating oils and grease manufactured by them as well as purchased from other parties on payment of duty as traded goods, to Nepal. For the said purpose the Appellant prepared Nepal Invoices in the form prescribed in Notification Nos. 40/2001-CE(NT) dated June 26, 2001 and Notification No. 20/2004-CE (NT) dated September 6, 2004, as amended, and also prepared corresponding Central Excise Invoices for the goods manufactured by the Appellant at its Budge Budge installation. The Appellant also prepared dealer invoices for the duty paid goods traded by it. Each Nepal invoice had corresponding Central Excise Invoice issued under Rule 11 of the said Rules for manufactured goods and also the dealer's Central Excise Invoices.

4. So far as manufactured goods exported to Nepal was concerned, the Appellant paid duty by raising debit in PLA and/or Cenvat Account whereas in respect of the traded goods exported to Nepal the Appellant debited in the RG-23D the quantity as well as duty elements.

5. In the instant case:

i) Invoices for export of goods for Nepal in prescribed form were prepared. Such Nepal Invoice shows the amount of duty paid or payable.

ii) The export consignment was sealed with the mention of bottle seal Number under the supervision of Central Excise Officer.

iii) Invoice under Rule 11 for goods manufactured and exported to Nepal were prepared and such manufacturer's Invoices were signed by the Superindent.

iv) With regard to traded goods exported to Nepal also corresponding dealers invoices under Rule 11 were prepared which were also signed by the Superindent, before export.

v) Dealers Invoice provided details of manufacturer's Invoice No. and date and the total quantity covered in such Invoice and proportional duty paid on the quantity exported to Nepal.

vi) An account in RG23-D was maintained for duty paid goods.

vii) Monthly returns in form ER-1 under Rule 12 of CER and Rule 9 of CCR, 2004 were also submitted wherein duty payable was mentioned with regard to goods cleared for home consumption as well as for the goods cleared for export.

viii) Quarterly returns under Rule 9(8) of CCR were also filed by the Appellant as registered dealers.

6. A Show Cause Notice dated 27.03.2008 was issued to the Appellant by the Joint Commissioner of Central Excise, Kolkata-VII, Commissionerate, wherein it was alleged that the Appellant had contravened the provisions laid down in Rule 8 and Rule 18 of the said Rules read with the said Notifications, inasmuch as they had short paid duty of Rs. 21,12,899/- (including Education Cess and Secondary & Higher Secondary Education Cess), in respect of the said goods exported to Nepal under the Rebate Scheme during the period March 31, 2003 to June 29, 2008 (hereinafter referred to as "the said period"). The said Notice was adjudicated by the Additional Commissioner vide Order-in-Original dated----, wherein the duty demanded in the Notice was confirmed along with interest and penalty. On appeal, the Commissioner (Appeals) upheld the demands vide impugned order dated 14.10.2011. Aggrieved against this order the Appellant has filed the present appeal.

7. In their grounds of appeal, the Appellant submitted that export of the duty paid traded goods to Nepal was made in accordance with Notfn. No. 40/2001-CE(NT) dated 26.06.2001 and succeeding Notfn. No. 20/2004-CE(NT) dated 06.09.2004. As per the condition No. 2(b) of Notifn. No.40/2001 and succeeding Notfn.No. 20/2004, the excisable goods shall

be exported after payment of duty, directly from the factory or warehouse except as otherwise permitted by CBEC by a general or special order. In this respect, CBEC's Excise Manual of Supplementary Instructions, 2005, dealing with export to Nepal and Bhutan in Part II of Chapter 8, para 2.1 states that "the conditions of export one similar export to other countries except for some minor variations", as specified. As per clause 1(ii) of Part-I of the said CBEC Supplementary Instructions "general permission has been granted" for export from a place other than a factory or warehouse, "if it is possible to correlate the goods and their duty paid character".

8. In the instant case, there is no dispute regarding payment of duty on the goods traded. In this regard, they cited the reference of the letter dated 29.01.2008 of the Range Superintendent to the Officer-in-Charge, Raxaul LCS, which evidences duty paid nature of the goods. The lubricating oil and grease exported to Nepal were purchased from various other manufacturers on payment of duty under the cover of central excise Invoice issued under Rule 11 of Central Excise Rules, 2002. Therefore, for dealing in such duty paid goods, the Appellant applied for and obtained registration certificate under Rule 9 and also have been issuing central excise Invoices in the prescribed form under Rule 11 as made applicable to registered dealers. The appellant as registered dealers also maintained account in form RG23-D. There is no dispute that the traded goods have been exported, along with the appellant's own manufactured goods. In view of the above, export of duty paid goods under the cover of Nepal Invoice along with corresponding dealer's Invoice showing debit of quantity of duty payable thereon is proper and legal. There can be no legally sustainable allegation or finding that the said goods were exported without payment of duty. There is no provision that in case of duty paid traded

goods being exported, duty has to be paid under the Act once again. The dealers' invoices issued give cross reference of manufacturer's Invoice No. and date and the total duty paid by the manufacturer thereof and the proportional duty attributable to the quantity exported to Nepal. There is a clear linkage of the goods with the manufacturer along with its central excise Invoice number and date. Further, it can be seen that the manufacturer paid duty not on its assessable value but on the export value of the Appellant (dealer). Under these circumstances, the question of demanding duty, on duty paid goods exported to Nepal, does not arise. Accordingly, they prayed for setting aside the demands of duty, interest and penalty in the impugned order.

9. The Ld. A.R. reiterated the findings in the impugned order

10. We observe that the Appellant exported lubricant oil to Nepal. They exported their own manufactured goods as well as traded goods procured from other manufacturers on payment of duty. So far as manufactured goods exported to Nepal was concerned, the Appellant paid duty by raising debit in PLA or Cenvat Account whereas in respect of the traded goods exported to Nepal the Appellant debited the duty as well as quantity in the RG-23D.

11. From the impugned order, we observe that the duty demanded has been confirmed on the allegation that the duty paid nature of the traded goods has not been established. In respect of the traded goods exported, we observe that the Appellant has prepared corresponding dealers invoices under Rule 11, which were also signed by the Superindent, before export. The Dealers Invoice provided details of manufacturer's Invoice No. and date and the total quantity covered in such Invoice and proportional duty paid on the quantity exported to Nepal. An account in RG23-D was

maintained for duty paid goods. Thus, we observe that the Appellant were following the procedures and formalities required to be followed by a registered dealer for storing of duty paid goods. The appellant issued cenvatable invoices with cross reference of invoices of manufacturers of the subject goods and filed quarterly returns under the Rule 9(8) of the said Rules. We observe that these documents clearly establish the duty paid nature of the traded goods which were exported to Nepal. Thus, we hold that the department cannot again demand duty from the Appellant for the traded goods exported, as duty has already been paid by the concerned manufacturers at the time of clearance of those goods. Hence, we hold that the demands of duty, interest and imposition of penalty on the Appellant in the impugned order are not sustainable.

12. In view of the above discussion, we set aside the impugned order and allow the appeal filed by the Appellant.

(Dictated and pronounced in the open Court)

Sd/-
(Ashok Jindal)
Member (Judicial)

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

Tushar Kr.