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

REGIONAL BENCH – COURT NO.1

Customs Appeal No.264 of 2010
(On behalf of Appellant)

(Arising out of Order-in-Original No.Kol/Cus/Port/25/2010 dated 19.05.2010 passed by Commissioner of Customs (Port), Kolkata)

M/s Indian Oil Corporation Limited
Alinagar, Mugalsarai Terminal, U.P.-232101

Appellant

VERSUS

Commissioner of Customs (Port), Kolkata
15/1, Strand Road, Kolkata-700001

Respondent

WITH

Customs Appeal No.265 of 2010
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Respondent

APPERANCE :

Ms.Reena Khair & Ms.Vrinda Bagaria, both Advocates for the Appellant
Shri S.Chakraborty, Authorized Representative for the Respondent

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

FINAL ORDER NO…76761-76762/2023

DATE OF HEARING : 19.09.2023
DATE OF DECISION : 19.09.2023

Per Ashok Jindal :

The appellants are in appeals against the impugned orders.

2. The facts of the case are that the appellant is a Public Sector Undertaking and is registered with the Central Excise authorities for storage and sale of petroleum products at Mughalsarai and Kanpur Terminal. The appellant was receiving duty paid imported goods, like High Speed Diesel through the pipeline from Haldia. The appellant was also receiving bonded excisable goods and duty paid excisable goods sold by the appellants. The indigenous imported goods is very common for storage. The said petroleum product was sold to the customers under the cover of invoices. In the invoices, the duty amount was reflected under the head "Customs/Excise". The HSD was not notified under the Cenvat Credit Rules/Modvat Credit Rules. Based on this, the two show-cause notices were issued to the appellant to show-cause as to why Countervailing duty (CVD) should not be demanded and recovered from them under the provisions of Section 28B of the Customs Act, 1962 alleging that the appellant has collected CVD from their customer what they have paid as CVD at the time of importation and the excess collection of CVD is recoverable under Section 28B of the Customs Act, 1962. It was found that the excess collection on account of additional duty on indigenous imported HSD at the rate of Rs.1 per litre.

2.1 The matter was adjudicated and the demand was confirmed against the appellants.

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

3. The ld.Counsel appearing on behalf of the appellants, submits that the said issue has been decided by this Tribunal in their own cases as reported in 2008 (227) ELT 263 (Tri.-Ahmd.) and 2007 (210) ELT 543 (Tri.-Bang.). Therefore, the issue is no more res integra and accordingly, the impugned order is to be set aside.

4. The ld.A.R. for the Revenue supported the impugned order.

5. Heard both the parties and considered the submissions.

6. We find that this issue is no more res integra and the same has been settled by this Tribunal in their own case cited (supra) [2008 (227) ELT 263 (Tri.-Ahmd.)] , wherein this Tribunal has observed as under :

> *"**7.** We have considered the submissions. There are a series of decisions of the Commissioners, Commissioner (Appeals) and the Tribunal holding that there is no excess collection of duty from the customers and therefore, demand is not sustainable. We also find merit in the appellant's contention that as per the Administered Price Mechanism Scheme any excess recovery has to be deposited in the oil pool account and any deficiency is made good by oil pool account, and therefore, it cannot be said that there is excess collection of duty. It may not be exactly fit into the scheme of Section 28B of Customs Act, 1962 or Section 11D of the Central Excise Act, 1944 but it has to be accepted that the purpose of legislation of these sections is fulfilled by this provision in the Administered Price Mechanism Scheme. Another point which goes in favour of the appellants is that while fixing the price of petroleum products, the Government gives the final price and oil companies do not have any freedom to change this. This is the reason that there is a system of adjustment of duty paid by the oil pool account. Therefore, we allow the appeal and set aside the order of the Commissioner of Customs, Kandla."*

and in the case cited (supra) [2007 (210) ELT 543 (Tri.-Bang.)], this Tribunal has observed as under :

> ***"6.*** *We have gone through the records of the case carefully. It is seen that during the relevant periods, the prices of the petroleum products were fixed under the Administered Price Mechanism (APM). The appellants have explained that whenever there is excess collection of duty, the same is surrendered to the oil pool account. In the Commissioners of Customs, Visakhapatnam and Chennai have already decided the issue in favour of the appellants. These orders have not been appealed against by the Department. Therefore, in terms of the Apex Court judgment in the case of CCE v. Bigen Industries Ltd. reported in 2006 (197) E.L.T. 305 (S.C.), the Department cannot be permitted to again raise the same dispute as the issue has reached finality between the appellants and the Department. The issue is also covered by the Tribunal's decision cited supra. In these circumstances, the impugned Orders-in-Original are set aside and the appeals are allowed."*

In view of the above, the Tribunal has observed that the price of the petroleum products was fixed under the Administered Price Mechanism (APM) and it has been explained by the appellant that whenever there is excess collection of duty, the same is surrendered to the oil pool account and consideration the same, the proceedings against the appellants were dropped. Therefore, following the precedent decisions in the appellants' own case, we hold that the demand confirmed against the appellant by way of impugned order, are not sustainable. Accordingly, the demands against the appellant are set aside.

7. Consequently, the impugned orders deserve no merits. Accordingly, the same are set aside.

8. In the result, the appeals are allowed with consequential relief, if any.

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

Sd/-
(Ashok Jindal)
Member (Judicial)

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

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