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

Excise Appeal No. 71232 of 2013

(Arising out of the Order-in-Appeal No. 22/DIB/CE(A)/GHY/13 dated 03.07.2013 passed by Commissioner, Customs & Central Excise, (Appeals), Guwahati.)

Commissioner of Central Excise & Service Tax, Dibrugarh,
Customs House, Nilamoni Phukan Path, Christian basti, Guwahati-781005.

...Appellant (s)

VERSUS

M/s Geo-Enpro Petroleum Ltd.,
Kharssang Oilfiled, P.O. Kharsang, District- Changlang, Arunachal Pradesh-792122.

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

APPERANCE :
Shri S. Mukhopadhyay, Authorized Representative for the Appellant
Ms. Payal Bharwani, C. A. & Mrs. Taniya Roy, Advocate for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No...77674/2023

DATE OF HEARING : 24.11.2023
DATE OF DECISION : 24.11.2023

PER K. ANPAZHAKAN :

The present appeal has been filed by the department (Appellant) against the impugned Order-in-Appeal dated 03.07.2013 passed by Commissioner, Customs & Central Excise, (Appeals), Guwahati. The issue to be decided in this appeal is whether interest can be charged on delayed payment of oil cess under Section 11AB of the Central Excise Act, 1944.

2. Briefly stated facts of the case are that the Respondent, M/s. Geo-Enpro Petroleum Ltd. are engaged in the manufacturing of Crude Petroleum Oil falling under Tariff Heading 2709.00 of the Central Excise Tariff, 1985. On such crude oil, the Respondent was required to pay Oil Cess in accordance with Section 15(1) of the Oil Industry Development Act, 1974 ('**OID Act**'). Section 15(4) of the OID Act borrowed the provisions of Central Excise Act, 1944 and the Rules made thereunder

including those relating to refunds and exemptions for the purpose of levy and collection of Oil Cess. Notification No. S.O .101(E) dated 01/02/1989 issued by the Ministry of Petroleum and Natural Gas prescribed an effective rate of Oil Cess on crude oil at Rs 900.00 per M.T. However, the Respondent paid such cess only at Rs. 853 per MT. Therefore, 23 show cause notices were issued on the Respondent proposing to recover Rs, 52,00,002/- Oil Cess less paid by the Respondent during the underlying period, along with interest under Section 11AB of the Central Excise Act, 1944 and penalty. On the same issue in the Respondent's own case, the CESTAT held that Oil Cess was payable by the Respondent at Rs. 900 per MT. Accordingly, the Respondent paid the Oil Cess, but did not discharge the interest. The adjudicating authority ordered for recovery of interest under Section 11AB of the Central Excise Act and dropped the proposal to pay penalty vide Order-in-Original dated 14.02.2008. Against the said order, the Respondent filed an appeal before the Ld. Commissioner(Appeals) who set aside the demand of interest vide Order-in-Appeal dated 03.07.2013. Against the impugned order, the Respondent is in appeal before this Tribunal.

3. In their cross objections, the Respondent submits that the issue as to liability of interest on belated payment of Oil Cess has already been decided by this Tribunal in the case of **C.C.E. & S.T., Dibrugarh v. Oil And Natural Gas Corporation Ltd., 2017 (357) E.L.T. 1199 (Tri. - Kolkata)** which was affirmed by the Hon'ble Gauhati High Court in **2018 (360) E.L.T. 463 (Gau.)**. In this case, it was held that Section 15(4) of the OID Act does not provide for payment of interest. Therefore, in the absence of any substantive provisions requiring payment interest on delayed payment of Oil Cess, the demand of interest is not sustainable. Accordingly, they submitted for rejecting the department's appeal.

4. In their grounds of appeal, the Appellant department made the following submissions:

(i) Section 15(4) of the OID Act authorizes the Central Excise officers to collect Cess as if it is Central Excise duty and all provisions of Central Excise Act, 1944 and Rules made there under are applicable for collection of this Cess. Since Cess is collected under Central Excise Act, 1944, the provisions of interest on delayed payment of Cess is rightly applicable.

(ii) If interest is not chargeable, then the oil producing companies will be at liberty to pay Cess at their own will without any interest and penalty. This was not the intention of the legislation

(iii) The CESTAT Kolkata vide Final Order No. A-836-838/Kol/06/ dated 28.09.06, decided the issue in favour of the department. Accordingly, they prayed for allowing the department's appeal.

5. Heard both sides and perused the appeal records.

6. We observe that the issue to be decided in this appeal is whether interest can be charged on delayed payment of oil cess under Section 11AB of the Central Excise Act, 1944. We find that the appellate authority has given a detailed finding on this issue, which is reproduced below:

7. We also observe that the issue is no longer *res integra* as the liability of interest on belated payment of Oil Cess has already been decided by this Tribunal in the case of **C.C.E. & S.T., Dibrugarh v. Oil And Natural Gas Corporation Ltd., 2017 (357) E.L.T. 1199 (Tri. - Kolkata)** which was affirmed by the Hon'ble Gauhati High Court in **2018 (360) E.L.T. 463 (Gau.)**. In this case, this Tribunal has held that Section 15(4) of the OID Act does not provide for payment of interest and accordingly decided the issue against the department. The relevant part of the decision is reproduced below:

> ***"4.****The respondents were required to pay cess under Oil industry (Development) Act, 1974 on crude oil. The respondents-assessee failed to pay the cess on the due dates during the period from April, 2002 to June, 2003. Which they were required to pay on a fortnightly basis. Show Cause Notices were issued and by Order-in-Original Nos. Div/Jor/Cex/Adj/10/04 and Div/Jor/Cex/Adj/11/2004, both dated 16-8-2004, the Assistant Commissioner, Central Excise Jorhat Division, confirmed the demand of interest amounting to Rs. 18,84,709/- and Rs. 12,80,248/- and also imposed personal penalty of Rs. 5000/- under Rule 8(4) read with Rule 27 of Central Excise Rule, 2002, in each order.*

> ***5.****The First Appellate Authority allowed the appeal filed by the appellant-assessee. Being aggrieved, the appellant-Revenue is in appeal before the Tribunal.*
>
> ***6.****The ld. AR appearing on behalf of the revenue reiterates the order of the Adjudicating Authority.*
>
> ***7.****Heard the ld. AR and perused the appeal records.*
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> ***8.****I find from the impugned order the ld. Commissioner (Appeals) has decided the appeal by relying upon the decision of Tribunal in the case of Oil & Natural Gas Corporation Ltd. v. Commissioner of Customs & Central Excise, Visakhapatnam-II reported in 2010 (252) E.L.T. 123 (Tri.-Bang.).*
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> ***9.****In my considered view there is no provision in the Oil Industry (Development) Act, 1974, for demand of interest for delayed payment of cess. Thus, I find that interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf. In view of the above discussions, the impugned order is upheld and the appeal is rejected."*

8. By following the decision cited above, we hold that no interest payable on delayed payment of oil cess under Section 11AB of the Central Excise Act, 1944, as Section 15(4) of the OID Act does not provide for payment of interest.

9. In view of the above discussion, we find no infirmity in the impugned order passed by the Commissioner (Appeals). Accordingly, we uphold the impugned order and reject the appeal filed by the department.

(Dictated and pronounced in the open Court)

(R. Muralidhar)
Member (Judicial)

(K. Anpazhakan)
Member (Technical)

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