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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal Nos.71034 of 2013

(Arising out of Order-in-Original No.02/ST/ADJ/COMMR/DIB/13 dated 29.05.2013 passed by Commissioner of Central Excise & Service Tax, Dibrugarh.)

M/s. Oil India Limited
(P.O.Duliajan, Dist.-Dibrugarh,
Assam-786602.)

...Appellant

VERSUS

Commissioner, Central Goods & Services Tax, Dibrugarh
.....Respondent

(Milan Nagar, Lane-F, P.O.-C.R.Building,
Dibrugarh-786003.)

WITH

(i) Service Tax Appeal No.75361 of 2014 (M/s.Oil India Limited); (ii) Service Tax Appeal No.75707 of 2015 (M/s.Oil India Limited); (iii) Service Tax Appeal No.75910 of 2016 (M/s.Oil India Limited); (iv) Service Tax Appeal No.76083 of 2017 (M/s.Oil India Limited); (v) Service Tax Appeal No.78390 of 2018 (M/s.Oil India Limited); (vi) Service Tax Appeal No.76796 of 2019 (M/s.Oil India Limited);

(i) (Arising out of Order-in-Original No. 06/ST/ADJ/COMMR/DIB/13 dated 11.12.2013 passed by Commissioner of Central Excise & Service Tax, Dibrugarh.)

(ii) (Arising out of Order-in-Original No. 12/ST/ADJ/COMMR/DIB/14-15 dated 31.03.2015 passed by Commissioner of Central Excise & Service Tax, Dibrugarh.)

(iii) (Arising out of Order-in-Original No. 06/ST/ADJ/COMMR/DIB/14-15 dated 18.03.2016 passed by Commissioner of Central Excise & Service Tax, Guwahati.)

(iv) (Arising out of Order-in-Original No. 03/ST/ADJ/COMMR/DIB/16-17 dated 23.03.2017 passed by Commissioner of Central Excise & Service Tax, Guwahati.)

(v) (Arising out of Order-in-Original No. 01/COMMR/DIB/2018-19 dated 12.06.2018 passed by Commissioner of CGST, Dibrugarh Commissionerate.)

(vi) (Arising out of Order-in-Original No. 01-02/ST/COMMR/DIB/19-20 dated 12.04.2019 passed by Commissioner of CGST, Dibrugarh Commissionerate.)

APPEARANCE

Mr.S.Thirumalai, Advocate & Ms.Manali Agarwal, Chartered Accountant for the Appellant (s)
Mr.S.Mukhopadhyay, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P. K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI C.J.MATHEW, MEMBER(TECHNICAL)

FINAL ORDER NO. 75378-75384/2020

DATE OF HEARING : 26 September 2019
DATE OF DECISION : 20 March 2020

P.K.CHOUDHARY :

All the present appeals have been filed by the assessee, M/s. OIL India Limited, against demand of service tax confirmed by the Ld. Commissioner vide various adjudication orders in respect of periodical Show Cause Notices issued for the period April 2011 to June 2017 under the category of "Transportation of Goods through Pipelines / Conduit Services". Since all the appeals involve common issue, the same are taken up together for disposal by this common order.

2. Briefly stated, the facts of the case are that the assessee M/s. OIL India Limited, a Govt. of India enterprise, is engaged in the business of exploration, production and sale of crude oil and natural gas. The point of dispute in the instant case is whether the appellant is liable to pay service tax under the category of "Transportation of Goods through Pipelines / Conduit Services" because the transportation charges are being separately recovered from the buyers in addition to the base price of crude oil. The said transportation charges is being recovered in the course of sale of crude oil in terms of the MOU entered with the buyers for purchase and sale of crude oil.

3. Shri S.Thirumalai, learned Advocate along with Ms.Manali Agarwal, learned Chartered Accountant appeared for the assessee and Shri S.Mukopadhyay, learned Authorized Representative appeared for the Revenue.

4. The Learned Advocate appearing for the appellant assessee submitted that the dominant intention of the crude sale agreement between the appellant assessee and the customer is to sell crude oil on FOR destination basis. The transportation of crude is by the pipelines belonging to the appellant assessee from the production centre to the refinery point and that the said transportation activity is in relation to sale of crude oil only. He strenuously emphasized on the point that since sale is on FOR destination basis, the goods have to be delivered at the buyer's premises where the property in goods is transferred to the customer and till that time the risk is borne by the appellant. He also submitted that since the transportation cost forms part of the total sale value, applicable sales tax / VAT has also been paid on the transportation charges on which the impugned demand of service tax has been raised. It is his submission that it is a settled legal position that both sales tax and service tax cannot be made simultaneously leviable. He relied on various decisions incl. the following decisions:-

- Imagic Creative Pvt Ltd. vs. Comm of Commercial Taxes 2008 9 STC 337 (SC)
- Grasim Industries Ltd vs. CCE 2016 (45) STR 65 (Tri-Del)
- CCE, Hyderabad vs. Singareni Collieries Co Ltd. (Final Order no. A/31199/2018 dated 10.09.2018)
- CCE, Bhubaneswar vs. Mahanadi Coalfields Ltd (Final Order no. 76585/2017 dated 21.08.2017)
- South Eastern Coalfields Ltd 2018 - TIOL - 1691 - CESTAT-DELHI
- Northern Coalfields Ltd vs. CGST 2018 (8) TMI 1742 CESTAT Delhi

He further contended that even if the transportation activity is considered to be 'service', the same would at best be considered to be self service i.e. the service to oneself to conclude the sale transaction which cannot be made liable to levy of service tax. He also contested the demand by invoking larger period of limitation and imposition of penalty in the absence of fraud or suppression on the part of the assessee.

5. The learned Authorized Representative for the Revenue supported the findings made by the Ld. Commissioner in the impugned order and submitted that since separate charges are recovered from the buyers, the appellant could not take the stand that they have not rendered transportation services by pipelines. He accordingly prayed that all the appeals be rejected being devoid of merit.

6. Heard both sides and perused the appeal records in great detail. We find that the issue to be decided is in a narrow compass so as to ascertain the status of the appellant whether the transportation activity has been undertaken in the capacity of 'service provider' or the 'seller of crude oil'. The question of service tax levy would arise only in the situation covered in the former case and not definitely in the later case. We find that the whole purpose of the arrangement is to execute the sale transaction in terms of MOU entered by the appellant with the customers like Indian Oil Corporation, for purchase and sale of crude oil, sample copies of which are annexed with the appeal paper book. We are of the view that had there been no arrangement for sale of crude oil to the buyer oil companies, there would have been no case for the appellant assessee to undertake the transportation of goods. It is only in order to honour the mandate of sale transaction to deliver the goods at delivery point, the transportation activity has been undertaken by the appellant assessee . We also note that in the entire impugned adjudication order, the Ld Commissioner has not disputed the submissions made by the appellant assessee that risk and rewards associated with the transportation of crude remains with the appellant till the time the same is delivered to the buyers premises where the sale transaction is concluded. Neither there is any dispute with regard to the fact of payment of sales tax on the transportation charges.

7. On careful perusal of the entire order impugned, we find that the Ld. Commissioner in para 25 of the order dated 12.04.2019 has observed as below to frame his opinion on the taxability :-

> *"25. I have further noticed that M/s OIL is delivering their crude oil at buyers premises at "Custody Transfer Point" and issues delivery tickets. For the purpose of collection of cess on crude oil, Section 15(2) of the Oil Industry (Development) Act, 1974 mandates that Cess on crude oil shall be collected on the quantity of crude oil received in a refinery. Therefore, M/s OIL are raising invoices on the quantity of crude oil delivered at the buyers' premises. Further, they cannot raise invoices on the quantity of crude oil injected in the pipeline because some quantity of crude oil may be contained in the pipeline and* ***their responsibility is to supply crude oil at the buyers' premises. Therefore, the custody transfer point is the place of delivery and cannot be treated as place of removal.*** *The place of removal is M/s OIL's pumping station where crude oil is injected in the pipeline. The charges for transportation from the place of removal to the place of delivery cannot be included in the value of the goods i.e. crude oil. Therefore, the transportation charges recovered by M/s OIL from the refineries cannot be included in the value of the crude oil.* ***When the contract is to deliver goods at the buyers' premises, the transportation of the same is service...."***

In the aforesaid paragraph, the learned Commissioner has categorically accepted the fact that the appellant is under contractual obligation to supply and deliver the goods at the buyer's premises which has been referred as 'Custody Transfer Point' or the point of delivery. However, he confused the whole matter with the concept of "place of removal" to hold that the transportation charges is not liable to be included in the value of crude oil, which is not the subject matter of dispute herein for the reason that the demand in this case is not on the crude oil but on the transportation charges which though separately recovered is to solely honour the sale transaction by delivering the goods at the buyers premises.

8. We also find that the issue is also squarely covered by the decision in the case of Grasim Industries Ltd. vs. CCE, Indore 2016 (45) STR 65 (Tri-Del) wherein it has been observed that -

> *"We have heard both the sides and examined the appeal records. Perusal of the agreement entered into by the appellant with M/s. Gwalior Chemical Industries Limited indicates that the laying of pipeline for supply of chlorine along with installation of chlorine vaporization system. The conditions of the agreement are that M/s. Gwalior Chemical Industries Limited will source their entire requirement of chlorine gas from the appellant. The quality of chlorine to be supplied has been specified along with charges to be paid per metric tonne for usage of pipeline in addition to agreed price of chlorine for quantity supplied through pipeline. The admitted facts of the case are that the appellant is manufacturing and selling chlorine through pipeline to M/s. Gwalior Chemical Industries Limited. The place of delivery is pre-determined as delivery point of pipeline at the recipient's end. In other words the sale and delivery of chlorine happens on the pipeline delivery point of the recipient's side. In this context, the appellants have rightly calculated the cost of transportation through pipeline in their assessable value of chlorine for Central Excise purpose. The appellants are selling chlorine and upon delivery of chlorine through pipeline at the buyers end, the transaction is concluded. The pipeline is laid and owned by the appellants. <u>The said pipeline is used for transport and sale of chlorine to M/s. Gwalior Chemical Industries Limited. In these factual background, we find there is no service provider and service recipient with reference to transport of goods through pipeline for charging service tax. The transport of chlorine through pipeline is done by the appellant in their own account and the delivery on sale is made to the buyer. The transportation charges are included as a consideration for sale and to discharge Central Excise duty. As such we find no justifiable legal basis</u>*

to sustain any service tax liability on the appellants in the above transaction."

Further, in the case of CCE, Hyderabad vs. Singareni Collieries Company Ltd (Final Order no. A/31199/2018), it has been observed that -

"6. We have considered the arguments on both sides. We find force in the arguments of the learned counsel and in the Order-in-Original that the sale of coal has not taken place at the time the loading takes place. The sale takes place after loading is completed. In other words, the coal continues to be owned by the respondent herein at the time of handling of the coal. Therefore, there is no client to whom the service has been rendered by the respondent herein. We have also examined the argument of the department that since the coal handling charges are being collected from NTPC they should be considered as the recipient of the service. However, the invoices raised by the respondent on NTPC show very clearly that the coal handling charges which they charge from NTPC is only an additional element in the cost of coal for delivering the coal as per the convenience of NTPC. Therefore, they have also paid VAT on the full cost of coal including the loading charges. In this factual matrix, we find that there is no case to charge service tax on cargo handling services for loading charges collected by the respondent from NTPC. The Order-in-Original needs to be upheld and we do so.

Similar views have been taken in the case of :-

- CCE, Bhubaneswar vs. Mahanadi Coalfields Ltd (Final Order no. 76585/2017 dated 21.08.2017)
- South Eastern Coalfields Ltd 2018 - TIOL - 1691 - CESTAT-DELHI
- Northern Coalfields Ltd vs. CGST 2018 (8) TMI 1742 CESTAT Delhi

9. In view of the above, it is our considered view that the transportation of crude oil has been undertaken by the appellant

assessee in the capacity of being a seller not a service provider. Further, since there is no service provider - service recipient relationship, there cannot be any question of service tax levy and thus, the demand cannot be sustained. Therefore, the demand of service tax, interest and penalty are set aside.

All the appeals are thus allowed with consequential relief as per law.

(Order pronounced in the open court on 20 March 2020.)

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

SD/
(C.J.MATHEW)
MEMBER (TECHNICAL)

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