IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. II

Appeal No. E/262/09 & E/87429/15

(Arising out of Order-in-Original No. 29/Commr./M-II/08 dated 22.12.2008 passed by the Commissioner of Central Excise, Mumbai-II).

M/s Bharat Petroleum Corporation Ltd.	Appellant

Vs.

Commissioner of Central Excise, Mumbai-III	Respondent

Appearance:

Shri Gajendra Jain, Advocate	for Appellant
Shri Sanjay Hasija, Supdt. (AR)	for Respondent

CORAM:

HON'BLE SHRI RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE SHRI RAJU, MEMBER (TECHNICAL)

Date of Hearing: 15.03.2018

Date of Decision: 13.04.2018

ORDER NO. **A/86006-86007/2018**

Per: Ramesh Nair

The facts of the case are that the appellants are selling their product i.e. Motor Spirit (MS) and High Speed Diesel (HSD) in the form of plain MS and HSD on ex-factory basis. The goods are sold on stock transfer basis of various terminals from where they are either sold as such or are being sold after addition of 'octane boosters' (Multi Functional Fuel Additives (MFFA) under the brand name 'Speed'. The appellants are discharging excise duty under Rule 7 of Central Excise Valuation Rules, 2000, according to which irrespective whether the plain MS/HSD sold from their terminal/depot or as Speed MS/HSD, they are applying the sale price of plain HSD and MS nearest to the time of removal of goods from the factory. The case of the Department is that in case of Speed MS/HSD, the sale price of Speed MS/HSD at which the goods are sold from their depot should be applied. Accordingly, there is under-valuation of the goods namely, Speed MS/HSD.

2. Shri Gajendra Jain, learned Counsel appearing on behalf of the appellant submits that in terms of Rule 7 of Central Excise Valuation Rules, 2000, the sale price of those goods which are cleared from the factory as such should be applied and not the price of the goods cleared in different form from depot. From the factory, all the goods i.e. MS/HSD are cleared only in plain form and not in the form of Speed MS/HSD, therefore, the sale price of plain MS/HSD shall be applicable for the assessment of duty of the goods cleared from the factory. He further submits that any value addition due to conversion from MS/HSD after removal of the goods, the same cannot be added in the assessable value of the manufactured goods cleared from the factory. In this regard, he placed reliance on the following decisions: -

(a) *Savita Chemicals Ltd. – 2000 (119) ELT 394 (Tri) affirmed by Hon'ble Supreme Court reported at 2001 (130) ELT A262 (SC).*

(b) *Hindustan Petroleum Corpn Ltd. Vs. Commissioner of Central Excise – 2009 (234) ELT 648 (Tri-Del).*

(c) *Bharat Petroleum Corpn Ltd. Vs. CCE – 2013 (295) ELT 648 (Tri-Kol).*

3. Shri Sanjay Hasija, learned Supdt. (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He submits that even the goods cleared from the factory is plain MS/HSD but the very same goods is sold from the depot in the form of Speed MS/HSD. Therefore, under the Rule 7 of the Central Excise Valuation Rules, 2000, the terms "such goods" is clearly applicable for the reason that the sale price of Speed MS/HSD is in respect of very same goods, which are cleared from the factory as plain MS/HSD. Therefore, the appellant applied the less assessable value, which is contrary to Rule 7 of Central Excise Valuation Rules, 2000. In support of the submissions, he placed reliance on the following Notification/Circular and judgments: -

(a) Notification No. 47/2001-CE (NT) dated 26.6.2001.

(b) Notification No. 17/2004-CE (NT) dated 04.9.2004

(c) Circular No. 793/26/2004-CX dated 02.06.2004

(d) Siddhartha Tubes Ltd. – 2006 (193) ELT 6 (SC)

(e) Clarient (I) Ltd. Vs. Commissioner of Central Excise, Thane-I – 2006 (916) ELT 353 (Tri-Mum)

5. On careful consideration of the submissions made by both sides and perusal of the records, we find that the issue to be decided is that even though the goods cleared from the factory, plain MS/HSD were sold from the depot as Speed MS/HSD, whether the sale value of Speed MS/HSD or plain MS/HSD nearest to the time of clearance of the goods shall apply. In this regard, we refer Rule 7 of the Central Excise Valuation Rules, 2000, which reads as under: -

> *"Where the excisable goods are not sold by the assessee at the time and place of removal but are transferred to a depot, premises of a consignment agent or any other place or premises (hereinafter referred to as "such other place") from where the excisable goods are to be sold after their clearance from the place of removal and where the assessee and the buyer of the said goods are not related and the price is the sole consideration for the sale, the value shall be the normal transaction value of such goods sold from such other place at or about the same time and, where such goods are not sold at or about the same time, at the time nearest to the time of removal of goods under assessment."*

From the plain reading of the above rule, it is observed that when the goods are not sold from the place of removal but are transferred to depot from where excisable goods are to be sold after their clearance from the place of removal, but value shall be normal transaction value of such goods sold from the said other place at or about the same time and where such goods are not sold at or above the same value, at the time nearest to the time of removal of the goods under assessment. In the present case, the goods cleared from the factory is plain MS/HSD but the same goods are sold from the depot as Speed MS/HSD. Therefore, all the goods which are cleared as plain MS/HSD, which was subsequently sold as Speed MS/HSD, the sale price of such plain MS/HSD shall apply. The contention of the appellant that such goods means the plain MS/HSD, hence in any case, sale price of Speed MS/HSD shall not apply is clearly in conformation to interpretation of Rule 7 for the reason that it is admitted fact that the goods cleared as plain MS/HSD are sold from depot as Speed MS/HSD. Therefore, we are of the opinion that whatever the plain MS/HSD cleared from the factory and the same was sold from the depot as Speed MS/HSD, the price of plain MS/HSD at which the goods were sold at the same time or at the time nearest to removal of goods shall apply. In our interpretation term "such goods" appearing in Rule 7 is the goods which originally cleared from the factory, in the present case it is plain MS/HSD, therefore, sale price of lain MS/HSD shally apply. The goods under assessment is plain MS/HSD and not Speed MS/HSD> Therefore, we do not agree with the findings of the impugned order

6. Accordingly, the impugned order is set aside and the appeals are allowed.

(Pronounced in Court on 13.04.2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

Sinha