IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: E/86854/2016

[Arising out of Order-in-Appeal No: CD/415 & 416/M-II/16 dated 10th June, 2016 passed by the Commissioner of Central Excise (Appeals), Mumbai – II.]

Hindustan Petroleum Corporation Ltd …***Applicant Appellant***

versus

Commissioner of Central Excise
Mumbai – II …***Respondent***

Appearance:

Shri H P Kanade, Advocate for the appellant

Shri S Hasija, Superintendent (AR) for the respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 10/04/2018
Date of decision: 10/04/2018

ORDER NO: A/86611/2018

Per: C J Mathew

After hearing submissions made by both sides and from the facts on record, it would appear that the dispute had its genesis way back in 1998 with a payment of ₹6,96,37,137 under protest by M/s

Hindustan Petroleum Corporation Ltd on a demand pertaining to usage of ‘naphtha’ as an input for generation of power for captive consumption against exemption notification no. 217/86-CE dated 2nd April 1986 and 67/95-CE dated 16th March 1995. The matter having been carried to the Tribunal, was decided in favour of assessee. As follow-up of the decision of the Tribunal, appellant sought refund of this amount which was rejected initially on the ground of not having passed the bar of unjust enrichment, which was again carried to the Tribunal, who, accepting the plea of appellant that they were in a position to demonstrate that they had not passed on burden of duty, remanded the matter back to the original authority *vide* its order no. A/221/14/EB/C-II dated 28th February 2014.

2. In the course of arguments, as recorded by Tribunal, it is seen that the Learned Counsel representing the appellant had referred to the order of the Commissioner (Appeals) holding them eligible for refund to the extent that electricity generated out of naphtha was used for manufacture and for the refund claim to be admitted to that extent. Taking note of this, the Tribunal, while remanding the matter, directed

> *‘5. …………. The appellant is directed to submit their books of accounts duly certified by a Chartered Accountant that the refund claim has been shown as ‘receivables’ in their books of accounts and has not been passed on to any other person. Subject to production of such evidences, the adjudicating authority shall reconsider the matter. The*

> *appellant is also at liberty to produce a copy of the order of the appellate authority dated 28/03/2002 with respect to their claim that the issue has already been settled in their favour subject some adjustment, and this order of the appellate authority has attained finality.'*

3. Accordingly, original authority held the amount of ₹ 6,81,91,432/- attributable to electricity utilized for manufacture as eligible but credited the amount to the Consumer Welfare Fund while appropriating ₹ 14,45,705/- to Consolidated Fund of India as liable to duty. Appellant now seeks restoration of this amount which has been appropriated to the Consolidated Fund of India consequent upon decision of the first appellate authority upholding appropriation effected by the original authority.

4. According to the Learned Counsel for the appellant, it was not open to the original authority to retain a portion of the demand which has been set aside by the Tribunal in order no. A/1707/WZB/06-C-I(EB) dated 21st August 2006. Learned Counsel further contends that the appropriated amount of ₹ 14,45,705/- is no longer a valid demand and that the original authority had faulted in retaining which was compounded to by the first appellate authority. According to him, the order of the Tribunal setting aside the demand must be brought to a logical conclusion by refund of the entire amount.

5. Learned Authorized Representative submits that the submission

of appellant which was taken on record by the Tribunal in its order no. A/221/14/EB/C-II dated 28th February 2014 on the basis of which a specified portion of the refund claim has been sanctioned and paid to the appellant. According to him, the lower authorities did not have any other option but to follow the order of the Tribunal that itself restricted the scope of remand against which the appellant had not preferred an appeal or sought rectification of mistake, if any.

6. At this stage Learned Counsel points out that, on an identical issue for the subsequent period, the appellant was before the Hon'ble High Court of Bombay and their appeal challenging the order of the Tribunal denying the benefit of exemption has been admitted.

7. Impugned before us is the order-in-appeal no. CD/415 & 416/M-II/16 dated 10th June, 2016 of Commissioner of Central Excise (Appeals), Mumbai – II which has upheld the order of the original authority retaining an amount of ₹ 14,45,705/-, representing that duty on inputs which is attributable to the use of electricity for purpose other than manufacture. I observe that the Tribunal had, at the instance of Learned Counsel, taken note of what was, admittedly, an amount not entitled to as refund. Though the Tribunal did remand the matter back to the original authority for the limited purpose of ascertainment of the applicability of the bar of unjust enrichment granting liberty to the appellant to produce before the adjudicating

authority a copy of the order of the appellate authority dated 28th March 2002 related to their claim that the issue has already been settled, subject to some adjustment, in their favour. In compliance with that direction, it was not possible for the lower authorities to go beyond the order of the Tribunal.

8. For this reason alone, the appeal does not sustain and is dismissed.

(Dictated in Court)

(C J Mathew)
Member (Technical)

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