

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I**

APPEAL No. E/430/2011

(Arising out of Order-in-Original No. 11/Comm.M.II/2011 dated
07.02.2011 passed by Commissioner of Central Excise, Mumbai-II)

Hindustan Petroleum Corporation Ltd.

Appellant

Vs.

Commissioner of Central Excise, Mumbai-II

Respondent

Appearance:

Ms. Padmavati Patil, Advocate, for appellant

Shri Ajay Kumar, Additional Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of Hearing: 11.12.2018

Date of Decision: 11.12.2018

ORDER No. **A/88324/2018**

Per: Sanjiv Srivastava

This appeal is directed against order in original No
11/Comm.M.II/2011 dated 07.02.2011 of
Commissioner Central Excise Mumbai II, holding as
follows:

*"41. I confirm the demand of Rs 2,77,57,814/- (Rupees
Two Crore Eighty Seven Lakhs Fifty Seven Thousand
Eight Hundred and Fourteen only) raised vide F N
V/Adj.(30)/Ch-II/CR-01/HPCL/Commr/M-II/560 dated*

04.02.2010 (Rs 2,63,57,860/- (CENVAT) + Rs 5,27,157/- (Education Cess) + Rs 2,63,579/- (Secondary & Higher Education Cess)) and V.Adj.(30)/Ch-II/CR-43/HPCL/ADC/M-II/10/895 dated 05.10.2010 (Rs 5,91,474/- (CENVAT) + Rs 11,829/- (Education Cess) + Rs 5,915/- Secondary & Higher Education Cess)) for the period Jan 2009 to Aug. 2009 and Sept 2009 to Aug. 2010 respectively on M/s HPCL under Section 11A(2) of Central Excise Act, 1944. The said amount is to be recovered along with interest chargeable under Section 11AB of Central Excise Act, 1944.

41. *I impose a penalty of Rs. 30,00,000/- (Rupees Thirty Lakhs only) on M/s HPCL under Rule 25 read with Rule 27 of Central Excise Rules, 2002"*

2.1 Appellants are engaged in manufacture of various petroleum products falling under Chapter 27, and Sulphur falling under Chapter 25 of the First Schedule to Central Excise Tariff Act, 1985.

2.2 Notification No 4/2006-CE dated 01.03.2006 exempts LPG (Domestic) and SKO (PDS) from the payment of Central Excise duty and Naphtha for use in the manufacture of the Fertilizers is exempted under Notification No 4/206-CE dated 01.03.2006) (These products hereinafter referred as "*exempted goods*").

2.3 Naphtha was cleared by the Appellant for home consumption on payment of Central Excise duty and also after claiming exemption under Notification No 67/95-CE dated 16.03.1995, for generation of electricity in their Co-generation Plant or Captive Power Plant.

2.3 The electricity generated was used for-

- i. Manufacture of the said exempted goods merely by reversing the proportionate Credit under Rule 6(3) (a) of CENVAT Credit Rules, 2004.
- ii. Refinery road lighting, canteen and administrative building etc.

2.4 As per Notification No 67/95-CE, *"Nothing contained in this notification shall apply to inputs used in or in relation to the manufacture of final product which are exempt from the whole of Duty of Excise or Additional Duty of Excise leviable thereon, or chargeable to Nil rate of duty, other than those goods which are cleared by a manufacturer of dutiable and exempted final products after discharging the obligation prescribed in Rule 6 of the CENVAT Credit Rules, 2004."*

2.5 Thus department was of the view that the appellants were required to pay duty on the quantity of Naphtha relating to the electricity consumed for manufacture of exempted goods and that used for allied facilities.

2.6 Show Cause Notices were issued to the appellant demanding duty on the Naphtha so consumed for generation of electricity used for the manufacture of exempted goods and used for allied facilities.

2.7 The show cause notices were adjudicated by the Commissioner as per order referred in para 1, supra. Aggrieved Appellants have preferred this appeal.

3.1 We have heard Ms Padmavati Patil, Advocate and Shri Ajay Kumar Additional Commissioner, Authorized Representative for the revenue.

3.2 Both counsel for the Appellants and Authorized Representative for the revenue, submit that issue involved in the matter has been decided in case of Appellants themselves vide order reported in [2013 (287) ELT 102 (T-Mum)].

4.1 We have considered the submissions made in the appeal and during the course of arguments.

4.2 We find that issue is squarely covered by the decision of tribunal in case of Appellants themselves as reported in [2013 (287) ELT 102 (T-Mum)]. In the said decision tribunal has held as follows:

"39. In view of the majority decision, following order is passed :

The benefit of exemption under Notification No. 67/95-C.E., dated 16-3-1995 was allowed on account of —

(a) Naphtha cleared, availing exemption under Notification No. 4/2006-C.E., dated 1-3-2006 for manufacture of fertilizers under International Competitive Bidding (ICB).

(b) On that much quantity of Naphtha, attributable to electricity generated in captive power plant/co-generation

plant, used for manufacture of exempt goods viz. LPG (Domestic) and Superior Kerosene Oil (PDS)

And denied on account of -

(c) On that much quantity of Naphtha, attributable to electricity generated in captive power plant/co-generation plant, used for allied activities like lighting in the artillery roads/yard, administrative building, canteen/cafeteria."

4.3 Following the said decision of tribunal we allow the appeal filed by the Appellant to the extent indicated in the order of tribunal referred above and remand the matter to the adjudication authority for re-quantification of demand in light of the said order.

4.4 The penalty imposed is also set aside.

5.1 The appeal filed by Appellant is allowed as indicated in para 4.3 and matter remanded back to the adjudicating authority for re-quantification of demand.

(Pronounced in court)

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)