CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CENTRAL EXCISE APPEAL NO: 1204 of 2011

[Arising out of Order-in-Appeal No: SB(22)22/MI/2011 dated 27th April 2011 passed by the Commissioner of Central Excise (Appeals), Mumbai – I.]

Hindustan Petroleum Corporation Ltd … ***Appellant***
Sewree Terminal, Sewree
Mumbai – 400 015

versus

Commissioner of Central Excise …***Respondent***
Mumbai – I
115 Maharshi Karve Marg, Churchgate (E)
Mumbai – 400 020

APPEARANCE:

Shri TC Nair, Advocate for the appellant

Shri N N Prabhudesai, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: _A/86226 / 2019

DATE OF HEARING: 03/05/2019
DATE OF DECISION: 11/07/2019

PER: C J MATHEW

M/s Hindustan Petroleum Corporation Ltd challenges order-in-appeal no. SB(22)22/MI/2011 dated 27th April 2011 of Commissioner of Central Excise (Appeals), Mumbai – I in which duty liability of

₹18,30,519/- was confirmed, along with interest thereon, and penalty of like amount under section 11AC of Central Excise Act, 1944 was imposed. The dispute pertains to the manufacture of ‘lubricating oils’ and of ‘gear oils’ between August 2005 and March 2006 on which duty liability on the said goods, cleared for retail sale, was discharged by computation, in accordance with section 4A of Central Excise Act, 1944, on the maximum retail price affixed on the containers. It is the contention of central excise authorities that the appellant-company, having issued ‘price advice’ during the period under dispute, should have computed liability on that price rather than on the lower ones in the affixed labels.

2. It is contended by Learned Counsel for the appellant that the central excise authorities had discarded their submission that the impugned clearances were from old stock on which the revised maximum retail price would not apply and that it was against law for them to even contemplate alteration of sale price to one higher than that printed on the affixed labels. Reliance is placed on the decision of the Tribunal in *Commissioner of Central Excise, Vadodara v. Bell Granito Ceramics Ltd [2009 (235) ELT 171 (Tri.-Ahmd.)]*, in *Amtrex Hitachi Appliances Ltd v. Commissioner of Central Excise, Vapi [2009 (236) ELT 203 (Tri.-Ahmd.)]* and in *Gujarat Goldcoil Ceramics Ltd v. Commissioner of Central Excise, Rajkot [2008 (223) ELT 556 (Tri.-Ahmd.)]*. Placing reliance on the decision in *Commissioner of*

Central Excise, Bangalore v. Pragathi Concrete Products (P) Ltd [2015 (322) ELT 819 (SC)] and *Aditya College of Competitive Exam v. Commissioner of Central Excise, Visakhapatnam [2009 (16) STR 154 (Tri.-Bang.)],* which was upheld by the Hon'ble High Court of Andhra Pradesh, it was contended that the extended period of limitation could not be invoked in disputes arising from audit of records which are maintained by an assessee.

3. Learned Authorised Representative attempted to convince us that the selling price of the goods produced by the appellant would, at the retail level, be in accordance with the advice.

4. Having heard the rival submissions and considered the records, we find that the demand is based on the existence of advice on maximum retail price. Under section 4A of Central Excise Act, 1944, an assessee is required to clear the goods on application of prescribed rate of duty on the value arrived at after abatement of prescribed portion from the maximum retail price affixed on the product or on the packaging. The appellant, admittedly, did revise 'maximum retail price' for their products but have claimed that the earlier production, lying in stock at the time of such revision, are cleared only at the price already printed on the product and, there being no additional consideration, was not violative of section 4A of Central Excise Act, 1944.

5. It is not the case of the Revenue that the goods were being sold at a different, and higher, price than that indicated on the labels affixed on the container. Despite circulation of advice with higher price, in the absence of such evidence, there is no provision for recovery of any duty thereof. On a perusal of section 4A of Central Excise Act, 1944, it is seen that the assessable value is 'deemed to be the retail price declared on such goods less such amount of abatement' and that, under sub-section (4A)(4) of Central Excise Act, 1944, the consequence of ascertaining of the maximum retail sale price will arise only upon the removal without declaring the retail sale price or when declared retail sale price is tampered with, corrected by or altered from the one declared on the package at the time and place of removal. In these circumstances, there is no scope for re-ascertainment ventured into by show cause notice that culminated in the order of the original authority that is impugned before us.

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

(Order pronounced in the open court on 11/07/2019)

(C J Mathew)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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