CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH

EXCISE APPEAL NO: 82 OF 2012

[Arising out of Order-in-Original No: 03/Commr/M-II/2011 dated 21st October 2011passed by the Commissioner of Central Excise, Mumbai – II.]

Bharat Petroleum Corporation Ltd
Mumbai Refiner, Mahul, Mumbai - 400074 ...***Appellant***

versus

Commissioner of Central Excise – II
9th Floor Piramal Chambers, Jijibhai Lane, Lalbaug
Parel, Mumbai 400012 ***...Respondent***

WITH

EXCISE APPEAL NO: 87550 OF 2013

[Arising out of Order-in-Original No: 01/WLH/M-II/2012-13 dated 22nd March 2013 passed by the Commissioner of Central Excise, Mumbai – II.]

Bharat Petroleum Corporation Ltd
Mumbai Refiner, Mahul, Mumbai - 400074 ...***Appellant***

versus

Commissioner of Central Excise – II
9th Floor Piramal Chambers, Jijibhai Lane, Lalbaug
Parel, Mumbai 400012 ***...Respondent***

AND

EXCISE APPEAL NO: 85669 OF 2015
&
CROSS-OBJECTION NO. 91070 OF 2015

[Arising out of Order-in-Appeal No: CD/99/M-III/2014-15 dated 1st December March 2014 passed by the Commissioner of Central Excise (Appeals), Mumbai – II.]

Commissioner of Central Excise – II
9th Floor Piramal Chambers, Jijibhai Lane, Lalbaug
Parel, Mumbai 400012 ...***Appellant***

versus

Bharat Petroleum Corporation Ltd
Mumbai Refiner, Mahul, Mumbai - 400074 ***...Respondent***

AND

EXCISE APPEAL NO: 85742 OF 2015
&
CROSS-OBJECTION NO. 91088 OF 2015

[Arising out of Order-in-Appeal No: CD/10/M-II/2014-15 dated 1st January March 2015 passed by the Commissioner of Central Excise (Appeals), Mumbai – II.]

Commissioner of Central Excise – II
9th Floor, Piramal Chambers, Jijibhai Lane, Lalbaug
Parel, Mumbai 400012 ...***Appellant***

versus

Bharat Petroleum Corporation Ltd
Mumbai Refiner, Mahul, Mumbai - 400074 ***...Respondent***

APPEARANCE:

Shri Rajesh Ostwal, Advocate for the assessee-appellant

Shri Sydney D'Silva, Additional Commissioner (AR) for the respondent

CORAM:

HON'BLE MR S. K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A/ 86135-86138 /2022

DATE OF HEARING:	19/01/2022
DATE OF DECISION:	19/01/2022

PER: S. K. MOHANTY

The issue involved in these appeals is identical and accordingly, the same are taken up for hearing together and a common order is being passed.

2. Briefly stated, the facts of the case are that the appellants herein are engaged *interalia,* in the manufacture of various petroleum products namely, motor spirits, high speed diesel, aviation turbine fuel, furnace oil and superior kerosene oil in their Mahul refinery. The said petroleum products are cleared by the appellant through the pipelines which connected to the storage tanks installed within the Mahul Refinery with storage tanks of other oil marketing companies (OMCs) *namely,* M/s Indian Oil Corporation Ltd, M/s Hindustan Petroleum Corporation Ltd. The said products are removed by the appellants from the refinery under the cover of central excise invoices, on payment of appropriate Central Excise duty. As per the settlement process with OMCs by the appellants, summary joint certificate for quantities received by OMCs in their tanks was prepared on fortnightly basis, which was duly signed by the representatives of delivering and receiving companies. Based on such fortnightly summary of joint certificates the appellants issued debit notes on monthly basis to the said OMCs for the purpose of financial settlement. The quantity shown in the joint certificate is considered as the quantity sold by the appellants to the OMCs. The *modus operandi* adopted by the appellants was disputed by the department and accordingly, show cause notice proceedings were initiated, proposing to demand the differential duties in respect of the consignments, where the quantity of final products

received by the OMCs in their storage tank were more than the quantity dispatched from storage tank at the refinery of the appellants. In other words, the department has ignored the issue with regard to the actual quantity dispatched by the appellant and received by the OMCs. It has been alleged that the appellants have removed the differential quantity clandestinely without payment of central excise duty. The matter arising out of the show cause notices were adjudicated by impugned orders, wherein the learned Commissioner of Central Excise has confirmed the proposed demands on the appellants. Feeling aggrieved with the impugned orders, the assesse-appellants have preferred these appeals before the Tribunal.

3. Revenue has also preferred appeals before the Tribunal against the impugned orders passed by the Learned Commissioner (Appeals), Mumbai – II. Revenue has assailed the impugned orders on the ground that dropping the entire duty demand confirmed on the appellant is not legal and proper. It has further been contended by Revenue that the assessee is liable to pay duty on the excess quantity received by the OMCs, after calculation of net quantity received by them at the end of the month, based on the joint certificates by $5^{th}/6^{th}$ of the following month.

4. Learned Advocate appearing for the appellants submitted that the modality of finalization of the accounts with the OMCs was settled by the Department of Revenue, in the Ministry of

Finance, pursuant to the query raised by the CAG in their report No. 17/2013. He further submitted that based on Ministry's clarification, the Kochi Commissionerate by letter dated 14/02/2014 had approved the procedure, whereby, the appellant was required to discharge duty liability in respect of the clearances to OMCs by the $5^{th}/6^{th}$ of succeeding month on the net quantity based on the joint certification. Further, he also submitted that based on the aforementioned clarification furnished by the Ministry, the Tribunal, in appellant's own case of Kochi Refinery, has remanded the matter back to the adjudicating authority to implement the clarification of the Ministry. He has also referred to the order dated 16/07/2018 of the Hon'ble High Court, wherein the appellant's Kochi Refinery case for a different period has also been remanded for implementation of the clarification issued by the Ministry of Finance. Accordingly, Learned Advocate prayed for remanding the present matters to the original authority to implement the aforementioned clarification.

5. On the other hand, Learned Authorised Representative appearing for Revenue reiterated the findings recorded in the impugned order.

6. Heard both sides and peruse the records.

7. We find that the C & AG vide Audit Report No.17/2013 has prescribed the modality for payment of duty on petroleum

products sold to the oil companies. Based on such Audit Report, the Department of Revenue, Ministry of Finance, Government of India has prepared “Action Taken Note”, clarifying that ‘the net quantity after adjusting the gain and loss on the quantity cleared from the Refinery to the quantity received at the Terminals of the Oil Marketing Companies (OMCs) has to be considered for calculating the duty liability. Further, we also find that on the basis of Ministry’s above clarification, the dispute pending before the Tribunal and the Hon’ble High Court of Kerala were also remanded to the original authority for implementation of the said clarification. Therefore, we are of the view that the present appeals filed by the assessee-appellants should also be disposed off by way of remand to the original authority for necessary implementation of the clarification furnished by the Ministry (referred *supra).*

8. Pursuant to the appeals filed by Revenue, learned Advocate appearing for the assesse-appellants contended that the amount involved in the appeals is below the monitory limit prescribed by the CBEC and as such, those appeals are liable to be dismissed on such ground. Since, the learned Commissioner (Appeals) has not specifically indicated the disputed amount in the impugned orders, we are of the view that Revenue’s appeals should also be disposed off by way of remand to the original authority for examining the CBEC Circular with regard to the prescribed monitory limit for filing/entering the appeals of

Revenue by the Tribunal.

9. In view of the foregoing discussions, the impugned orders are set aside and the appeals are allowed by ways of remand to the original authority for consideration of the issues discussed above and for passing of *denovo* adjudication orders. Needless to say, that opportunity of personal hearing should be granted to the appellant before deciding the matter afresh.

10. Cross-objections stand disposed of.

(Operative Part of the Order Pronounced in Open Court)

(C J Mathew)
Member (Technical)

(S.K. Mohanty)
Member (Judicial)

**/as*