CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Excise Appeal No. 87532 of 2013

(Arising out of Order-in-Original No. Belapur/91/BEL-I/R-II/COMMR/KA/12-13 dated 22.03.2013 passed by the Commissioner of Central Excise, Belapur)

Commissioner of CGST &Central Excise, Belapur …..**Appellant**
1st Floor CGO Complex,
CBD Belapur, Navi Mumbai

Vs.

Hindustan Petroleum Corporation Ltd. …..**Respondent**
(WOT-White Oil Terminal)
D-99, TTC Indl. Area,
Turbhe, Vashi, Navi Mumbai

APPEARANCE:

Shri Padmavati Patil, Advocate with Shri Viraj RehamWalal, Advocate for the appellant
Shri Deepak Bhilegaonkar, DC(AR) for the respondent

CORAM: **Hon'ble Mr C J Mathew, Member (Technical)**
Hon'ble Mr Ajay Sharma, Member (Judicial)

FINAL ORDER No: A/86334/2023

DATE OF HEARING: 29-08-2023
DATE OF DECISION : 29-08-2023

Per: Coram

This appeal of the Revenue, against order-in-original no. Belapur/91/BEL-I/R-II/COMMR/KA/12-13 dated 22nd March 2013 of

Commissioner of Central Excise, Belapur, arises from dispute on discharge of duty liability on ‘superior kerosene oil (SKO)’ that was being stored in ‘warehouse without payment of duty – a facility that was withdrawn by notification no. 17/2004-Central Excise (NT) dated 4th September 2004- and cleared to ‘oil marketing companies (OMC)’ between September 2000 and September 2004 on which price recovered was alleged to be higher than the value at which duty was assessed on removal for which notice was issued in 30th September 2005.

2. The order[1] of adjudication confirming demand of ₹ 3,64,28,967 was carried to the Tribunal by the appellant herein and it would appear that, based on order[2] of the Tribunal, the matter was taken up and disposed off afresh by Commissioner of Central Excise, Belapur in the impugned order[3] dropping the demand.

3. In the appeal, it is contended that the order confirming recovery of duty was, as of then, pending before the Tribunal and that, owing to mistake, the direction that was issued, and pertaining to another dispute of the same assessee for the same period adjudicated[4] earlier, was shown as disposing of the order pertaining to the issue impugned here. It was further contended that a second order in the same show

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[1] [order-in-original no. 42/COMMR/AKP/2007-08 dated 30th October 2007]
[2] [final no. A/0142/12/EB/C-II dated 19th November 2012 in appeal no. E/2128/06]
[3] [order-in-original no. Belapur/91/BEL-I/R-II/COMMR/KA/12-13 dated 22nd March 2013]
[4] [order-in-original no. 61/COMMR/05-06 dated 28th February 2006]

cause notice was contrary to Central Excise Act, 1944 and principles governing adjudication.

4. Both Learned Authorized Representative and Learned Counsel for respondent concur that the Tribunal had, subsequently, allowed the appeal of the assessee involved in the present dispute and that the appeal now before us has been rendered infructuous.

5. Accordingly, the appeal is dismissed as infructuous. .

(Dictated and pronounced in open Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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