CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 86163 OF 2013

[Arising out of Order-in-Appeal No: BR (363) TH-I/2012 dated 3rd December 2012 dated passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – I.]

Liberty Oil Mills Ltd
Village-Bamne, Tal: Shahapur, Dist: Thane – 421 601 … ***Appellant***

versus

Commissioner of Central Excise
Thane-I
Navprabhat Chambers, Ranade Road, Dadar (W)
Mumbai - 400028 ***…Respondent***

APPEARANCE:

Shri P H Dharmadhikari, Advocate and Shri B A Bhalerao, Advocate for the appellant

Shri Amrendra Kumar Jha, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: __85035/2024

DATE OF HEARING:	21/09/2023
DATE OF DECISION:	18/01/2024

PER: C J MATHEW

The appellant, M/s Liberty Oil Mills Ltd, is aggrieved by the order for recovery of ₹ 3,63,502 under section 11A of Central Excise Act, 1944, along with applicable interest under section 11AB of Central Excise Act, 1944, besides penalty of like amount under section 11AC of Central Excise Act, 1944 that was upheld in order[1] of Commissioner of Central Excise (Appeals), Mumbai Zone-I. The demand itself was fastened on shortage of stock of finished goods to the extent of ₹ 4,520 and of ₹ 3,58,982 relating to 107.849 MT of 'refined soya oil' reported in the stock finished goods as on 31st March 2003 but not reflected in the corresponding monthly return filed with the central excise authorities.

2. Learned Counsel for the appellant submitted that the demand was sought to be fastened following visit of central excise authorities to their premises on 15th October 2003. It was contended by him that deficiency of stock of certain finished goods was attributable to error in measurement and that, as on date of visit, there was no deficiency insofar as 'refined soya oil' was concerned. It was further contended by him that fastening of duty liability on the latter was incorrect as the impugned goods were exempted from duty in terms of notification no. 6/2003-CE dated 1st March 2003 that required branding for levy of duty and that the lower authorities had failed to establish that the impugned goods had been branded before clearance.

---

[1] [order-in-appeal no. BR (363) TH-I/2012 dated 3rd December 2012]

3. We have heard Learned Authorised Representative.

4. Though it has been claimed on behalf of the appellant that the shortage of stock detected on the date of the visit of jurisdictional central excise authorities could have arisen from error in measurement/record, no evidence to that effect or of any permitted tolerance has been brought to our notice. Furthermore, the plea that stock of ‘refined soya oil’ did match that in the records on the date of inspection does not erase the possibility of difference in stock as at the end of March 2003. No evidence has been placed on record to demonstrate the disposal of the impugned goods, or rectification of records, and reconciliation between date of entry in records and date of visit which would lend credibility to the submission that fastening of duty applicable to branded ‘soya oil’ was inappropriate.

5. For the above reasons, we find no merit in the appeal which is dismissed.

(Order pronounced in the open court on 18/01/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*