CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 89099 OF 2013

[Arising out of Order-in-Appeal No. US/169-170/M-II/2013 dated 27th June 2013 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.]

Commissioner of Central Excise,
Mumbai - II
9th Floor, Piramal Chambers, Jijibhoy Lane,
Lalbaug, Mumbai - 400012 … ***Appellant***

versus

Indian Oil Corporation Ltd
Pirpau, Trombay, Mumbai - 400074 ***…Respondent***

APPEARANCE:

Shri Xavier Mascarenhas, Superintendent (AR) for the appellant

Ms Manasi Patil, Advocate for the respondent

CORAM:

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

FINAL ORDER NO: 85113/2024

DATE OF HEARING:	13/09/2023
DATE OF DECISION:	20/02/2024

PER: C J MATHEW

This appeal of Revenue, at the instance of the competent

Committee of Commissioners aggrieved by order[1] of Commissioner of Central Excise (Appeals)-II, Mumbai substituting the transfer of amount claimed as refund to the Fund by release of ₹ 61,80,620 and ₹ 1,99,447 to M/s Indian Oil Corporation Ltd, has been preferred on the ground that the reliance placed by the first appellate authority on certificate of Chartered Accountant that had not been submitted along with the claim for refund was inappropriate and that the respondent in appeal should have been directed to subject it to verification/ disputation.

2. From the records, it is seen that credit of ₹ 61,80,620, pertaining to September-October 1997, was made good by deposit through TR-6 challan dated 30th March 1999 and that credit of ₹ 1,99,447, pertaining to April-May 2004, had been made good in 2007. Subsequently, it was determined that the eligibility to credit was beyond question leading to claim for refund of the said amounts. The original authority, while acknowledging the incorrectness of fastening of recovery of the said amounts for ineligibility to avail MODVAT credit under rule 57A of the erstwhile Central Excise Rules, 1944 as held by the first appellate authority after several rounds of disputation, limited the proceedings to compliance with section 11B of Central Excise Act, 1944 requiring evidence of incidence of duty having been borne by the claimant.

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[1] [order-in-appeal no. US/169 & 170/M-II/2013 dated 27th June 2013]

3. We have heard Learned Authorised Representative and Learned Counsel for the respondent at length. The sole grievance of Revenue appears to be the outright acceptance of the certificate submitted for the first time before the first appellate authority. It was pointed out by Learned Counsel that the first appellate authority had, indeed, solicited the views of the respondent in that appeal and it was owing to lack of response thereto that the certificate was found acceptable.

4. The appeal has not afforded any reason for suspecting the veracity of the certificate but has relied upon the decision of the Tribunal in *BWL Ltd v. Commissioner of Central Excise, Raipur [2010 (261) ELT 577 (T)]*.

5. It is on record that the first appellate authority had furnished the impugned certificate to the authority concerned but failed to obtain any response. The first appellate authority was well within its rights to proceed with the decision in the manner that he did. Nonetheless, the responsibility fastened on the reviewing authority is that of legality and propriety which is not limited to grant of opportunity. Therefore, even if the course of action pursued by the first appellate authority is not flawed, no harm would be caused by subjecting the said certificate to scrutiny by the original authority before whom it had not been made available at any stage before.

6. Accordingly, we set aside the impugned order and remand the

matter back to the original authority to ascertain the veracity of contents of the certificate. Appeal is, thus, allowed by way of remand.

(Order pronounced in the open court on 20/02/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*