# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

**Excise Miscellaneous Application No. 85371 of 2024**
**(**on behalf of Respondent)

**In**

**Excise Appeal No. 85639 of 2015**

(Arising out of Order-in-Original No. 14/RN/COMMNR/M-II/2014-15 dated 31.12.2014 passed by the Commissioner of Central Excise, Mumbai-II)

**Hindustan Petroleum Corporation Ltd.** **.... Appellant**
Refinery Division, B.D. Patil Road,
Mahul, Mumbai – 400074.

Versus

**Commissioner of CGST & Central Excise, Mumbai-II** **.... Respondent**
9th Floor, Piramal Chambers
Lalbaug, Parel,
Mumbai – 400 012.

**AND**

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9th Floor, Piramal Chambers
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Appearance:

Shri Sachin Chitnis a/w Shri Viraj Reshamwala, Advocates for the Appellant

Shri C.S. Vinod, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**
**HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/85619/2024**

Date of Hearing: 14.06.2024
Date of Decision: 14.06.2024

***PER: S.K. MOHANTY***

Heard both sides and perused the case records.

2. Revenue has filed this miscellaneous application, seeking change of name and address of the respondent. The prayer made by the Revenue is considered and accordingly, the Registry is directed to incorporate the following changed name and address of the respondent in the appeal records for the purpose of disposal of the appeal:-

"Commissioner of Central Goods Service Tax & Central Excise,
Navi Mumbai Commissionerate,
16th Floor, Satra Plaza, Sector -19D, Palm Beach Road,
Vashi, Navi Mumbai – 400 705".

3. Denial of CENVAT Credit of Service Tax paid on insurance premium towards 'Additional War Risk' is the subject matter of present dispute. The impugned order has denied the CENVAT Credit availed by the appellant on the ground that the insurance premium paid on additional war risk is an input service for the Shipping Corporation of India Ltd. (SCI) and not for the appellant. Further, it has also been contended that debit notes, based on which, the CENVAT Credit was availed by the appellant is not a proper document in terms of Rule 9 of the CENVAT Credit Rules, 2004. The impugned order has also confirmed the demand on the appellant on the ground that during the disputed period, they had availed excess CENVAT Credit to the tune of Rs.20 lakhs, which was subsequently reversed by them on such mistake being pointed out by the Department.

4. We find that a Contract of Affreightment for Transportation of Imported/Indigenous Crude Oil was entered into between the appellant and SCI. The said contract at Clause 10.0 under the title 'Additional War Risk Insurance' had provided as under: -

*"10.0 <u>ADDITIONAL WAR RISK INSURANCE</u>*

*Any additional insurance premium incurred by the owners for the ship, towards war risk, blocking and trapping etc. shall be reimbursed by the Charterers to owners separately on submission of debit note, together with certified copies of supporting documents. If the vessel re-enters war risk zone(s) during the validity period of the war risk insurance premium for owners purpose, owners shall prorate such war risk insurance premium from the period of first entry for applicable voyage to re-entry into war risk zone(s). In case vessel does not re-enter war risk zone(s) during validity of the war risk insurance premium, entire premium shall be payable by the Charterers."*

5. Since the insurance premium paid by M/s Shipping Corporation of India Ltd. towards additional war risk zone was paid by the owner (shipper) and the reimbursement amount was collected from the appellant (charterers), the appellant has taken the CENVAT Credit of the amount indicated in the debit notes issued by the owner (shipper). We further find that the debit note annexed the insurance policy contain the details of the insurance company including the Service Tax registration number etc. Since the insurance premium was paid by the owner of the vessel and collected the same from the appellant, the credit on cost of transportation of their own goods and the Service Tax paid on such insurance premium should be available to the appellant. Further, debit note though has not been prescribed as a proper document under Rule 9(1) *ibid* for taking of CENVAT Credit, but the proviso appended to Rule 9(2) *ibid* thereto provides that the CENVAT Credit may be allowed by the jurisdictional authorities upon subjective analysis that the Service Tax amount has been paid to the Government exchequer and the services were received by the person, who avail such credit. We further find that the owner of the vessel has issued a certificate dated 26.12.2014 certifying that they had not availed any CENVAT Credit on the Service Tax paid on the insurance policy. Thus, it is evident that the Service Tax amount ultimately paid by the appellant should be available as CENVAT Credit.

6. With regard to excess availment of CENVAT Credit, we are in agreement with the findings recorded in the impugned order that the appellant had availed excess CENVAT Credit to the tune of Rs.20 lakhs. However, it is an admitted fact on record that on pointing out

of such mistake by the Audit Wing of the department, the appellant had reversed such credit. Further, it is also evident from the fact that the said amount debited by the appellant was appropriated in the impugned order passed by the adjudicating authority. Since the appellant had availed excess credit and such excess credit was reversed subsequently, we are of the view that the appellant is exposed to the consequences for payment of penalty inasmuch as the Government has lost the revenue till such time the appellant had kept such CENVAT Credit in their Books of Account. However, considering the fact that there is no element of *mens rea* and more particularly the appellant is a Public Sector Undertaking (PSU) and functioning under the administrative control of the Ministry of Petroleum and Natural Gas, we are of the view that the provisions of Rule 15(2) *ibid* read with Section 11AC of the Central Excise Act, 1944 cannot be invoked for imposition of penalty.

7. In view of the foregoing discussions, the appeal filed by the appellant is allowed to the extent of availment of CENVAT Credit on the basis of debit note and the reversal made subsequently on the excess credit availed by them. However, the impugned order sustains insofar as payment of interest towards the excess CENVAT Credit till the time of its reversal made in the CENVAT account.

8. In the result, the appeal is partly allowed in favour of the appellant. Miscellaneous application stands disposed off.

(Dictated and pronounced in open court)

**(S.K. Mohanty)**
**Member (Judicial)**

**(M.M. Parthiban)**
**Member (Technical)**

Sinha