CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 87531 OF 2013

[Arising out of Order-in-Original No: Belapur/91/Bel-I/R-II/COMMR/KA/12-13 dated 22nd March 2013 passed by the Commissioner of Central Excise, Belapur.]

Commissioner of Central Excise
CGO Complex, CBD Belapur, Navi Mumbai - 400705 … ***Appellant***

versus

Hindustan Petroleum Corporation Ltd
D-99 TTC Industrial Area, Turbhe,
Navi Mumbai – 400705 ***…Respondent***

APPEARANCE:

Shri Rajiv Ranjan, Assistant Commissioner (AR) for the appellant

Ms Padmavati Patil, Advocate for the respondent

CORAM:

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

FINAL ORDER NO: 86146/2024

DATE OF HEARING: 10/04/2024
DATE OF DECISION: 09/10/2024

PER: C J MATHEW

This appeal of Revenue lies against order[1] of Commissioner of Central Excise, Belapur which dropped proceedings initiated in show cause notice dated 7th October 2005 by placing reliance on the direction of

[1] [order-in-original no. Belapur/91/Bel-I/R-II/COMMR/KA/12-13 dated 22nd March 2013]

the Tribunal while remanding the dispute back to the original authority thus:

> *'18. In the OIO dated 2 8.02.2006 valuation of the goods adopted by the assessee was also an issue. However, while remanding the case, Hon'ble Tribunal has already decided the issue in favour of the assessee. The relevant para is reproduced below:*
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> > *"We find that the: facility for bonded warehousing of petroleum products was withdrawn with effect from the midnight of 5/ 6,9.2004. In mew of the withdrawal of the warehousing facility, the applicants are liable to pay duty in respect of the petroleum products which were lying in the warehouse as on the midnight of 5/6.09.2004. Further, we find that the Board vide Circular dated. 4.1.2005 clarified that duty in respect of the quantity of bonded/ warehoused petroleum products treated as cleared immediately after 5/6.09.2004 could be discharged in terms of Rule 8 of the central Excise Rules, 2004 by 5.10.2004. In view of this clarification, the applicants cleared the goods and paid appropriate duty liability at the time of clearance of the goods, on 5.10.2004."'*

2. As the issue is before the Tribunal for the second time, a brief appreciation of facts may be relevant. M/s Hindustan Petroleum Corporation Ltd operated an oil terminal where non-duty paid 'superior kerosene oil (SKO)' was being stored on receipt from their refinery for clearance thereon to dealers in 'public distribution system (PDS)' and to other oil marketing companies. With effect from midnight of 5th/6th September 2004 the facility of warehousing of non-duty paid products was withdrawn and the goods held in stock were required to discharge duty liability by the 5th of the following month. The respondent herein intimated payment of duty without any details of the manner in which the duty liability had been calculated. The jurisdictional central excise

authorities were of the view that, in terms of section 4(1)(d) of Central Excise Act, 1944 read with rule 4 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, the value adopted for assessment should have been as was nearest to the time of removal of the goods and thereby concluded that there was short-levy of central excise duty. In appeal thereon before the Tribunal, the assessee had intimated that the clearance effected to the 'oil marketing companies (OMC)' was, in turn, cleared to dealers in the 'public distribution system (PDS)' and that there could be no differential duty liable for recovery.

3. According to Learned Authorized Representative, the order of the Tribunal had not contested the valuation issue as presumed in the impugned order. It was further argued that the clearance effected to the intermediary 'oil marketing companies (OMC)' was at higher value and, therefore, resort to the 'administrative price' fixed for the clearance 'end users' would not apply. He pointed out that the decision of the Larger Bench of the Tribunal in *Oil and Natural Gas Corporation Ltd v. Commissioner of Central Excise, Raigad [2015-TIOL-1960-CESTAT-MUM-LB]* has settled the matter finally inasmuch as it has held therein

> *'18. In view of the foregoing findings, it has to be held that the appellant was required to discharge its duty liability on the basis of 'transaction value' which it collected from the OMCs by issuing commercial invoices during the disputed period in terms of provisions of Section 4 of the Central Excise Act as amended w.e.f. 01/07/2000. In other words, post 01/07/2000, the provisions*

> *of new Section 4 cannot be ignored for determination of assessable value of LPG sold in bulk to OMCs for further sale in packed form to dealers/domestic consumers. Therefore, the views expressed by the referral Bench are correct and the same are endorsed.'*

4. We have heard Learned Counsel for the respondent.

5. We find that the Tribunal, while remanding the matter back to the adjudicating authority, had merely required the adjudicating authority to take into consideration clearances of 'superior kerosene oil (SKO)' to the 'public distribution system (PDS)' and that the purported direction of the Tribunal, which the adjudicating authority placed emphasis on, was merely a narration of the facts set out therein. As pointed out by Learned Authorized Representative, a Larger Bench of the Tribunal had subsequently in *re Oil and Natural Gas Corporation Ltd* decided matter as set out *supra*.

6. As the order dropping the proceedings is not in compliance with the directions of the Tribunal on the former occasion, we set aside the impugned order and remand the matter back to the original authority for a fresh decision in accordance with law as settled.

(Order pronounced in the open court on 09/10/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*