CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 85765 of 2015

(Arising out of Order-in-Original No. 70/S.K./M-I/2014-15 dated 13.01.2015 passed by the Commissioner of Central Excise, Mumbai-I)

Bharat Petroleum Corporation Ltd. **.... Appellant**
6, Malltet Road, Wadi Bunder,
Mumbai-400 009.

Versus

Commissioner of Central Excise, Mumbai-I **.... Respondent**
Office of Principal Commissioner,
Central Excise, Mumbai-I,
New Central Excise Building,
115, M.K. Road, Mumbai-400 020.

With

Excise Appeal No. 86472 of 2017

(Arising out of Order-in-Appeal No. SK/93/M-I/2017 dated 31.03.2017 passed by the Commissioner of Central Excise (Appeals), Mumbai-I)

Bharat Petroleum Corporation Ltd. **.... Appellant**
6, Malltet Road, Wadi Bunder,
Mumbai-400 009.

Versus

Commissioner of Central Excise, Mumbai-I **.... Respondent**
Office of Principal Commissioner,
Central Excise, Mumbai-I,
New Central Excise Building,
115, M.K. Road, Mumbai-400 020.

Appearance:

Ms Padmavati Patil a/w Shri Viraj Reshamwala, Advocates for the Appellants

Shri Mahesh Patil, Authorized Representative for the Respondents

CORAM:

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

FINAL ORDER NO. A/85706-85707/2025

Date of Hearing: 09.04.2025
Date of Decision: 09.04.2025

Per: S.K. MOHANTY

The issue involved in both these appeals is identical and accordingly, the same are taken up for hearing together and a common order is being passed.

2. Briefly stated, the facts of the case are that the appellants are engaged *inter alia*, in the manufacture of Lubricating Oils and Specialty Oils, falling under Sub Heading No. 2710 1980 & 3402 1900 respectively, of the of the First Schedule to the Central Excise Tariff Act, 1985. The appellants are also engaged in the activities of trading and for that purpose, were duly registered with the Central Excise department. During the disputed period, the appellants availed CENVAT Credit on base oil procured by them. After availing the CENVAT benefit on the said products, the appellants had removed the same to M/s. Balmer Lawrie Ltd., and reversed the CENVAT Credit availed on base oil in terms of Rule 3(5) of the CENVAT Credit Rules, 2004. M/s Balmer Lawrie Ltd., had manufacture grease out of the base oil supplied by the appellants and in the manufacturing process, they had added adhesives and removed the goods i.e., 'Grease' to the appellants on payment of Central Excise duty on the value declared by the appellants. On receipt of the grease in the factory premises, the same were sold by the appellants to the outside buyers. The activity of selling these grease by the appellants to their buyers was interpreted by the department as a trading activity, and accordingly, proceedings were initiated for recovery of the amount as prescribed under Rule 6 *ibid*. The matter was adjudicated vide the impugned orders No. 70/S.K./M-I/2014-15 dated 13.01.2015 passed by the Commissioner of Central Excise, Mumbai-I; and SK/93/M-I/2017 dated 31.03.2017 passed by the Commissioner of Central Excise (Appeals), Mumbai-I, wherein the original authority has confirmed the adjudged demands on the appellants and the first appellate authority had rejected the appeal filed by the appellants respectively, by upholding the order of the original authority. Feeling aggrieved with the said impugned orders dated 13.01.2015 and 31.03.2017, the appellants have preferred these appeals before the Tribunal.

3. It is an admitted fact on record that on receipt of base oil in the factory premises, the appellants had availed CENVAT Credit of Central Excise duty paid thereon and on removal of the same to the M/s. Balmer Lawrie Ltd., the credit so availed was reversed by them, under sub-rule (5) of Rule 3 *ibid*. By utilizing the base oil supplied by the appellants, M/s. Balmer Lawrie Ltd. had manufactured the final product i.e., grease and supplied the same to the appellants. The appellants had not availed any CENVAT Credit of Central Excise duty paid by M/s. Balmer Lawrie Ltd., in respect of grease supplied to them. Since no CENVAT benefit was availed in respect of the grease received by the appellants from M/s. Balmer Lawrie Ltd., in our considered view, the provisions of Rule 6 *ibid* shall not be applicable in the case in hand inasmuch as the appellants did not avail any CENVAT Credit attributable to the manufacture of both dutiable as well as exempted goods. In other words, the appellants had only used the CENVAT Credit of Central Excise duty paid on inputs and service tax in the input services, which were used exclusively in the manufacture of the excisable goods removed by them on payment of duty. Thus, under such circumstances, the embargo created under Rule 6 *ibid* shall not be applicable, requiring the appellants to pay the requisite percentage of amount in respect of the goods removed by them from the factory.

4. In view of the foregoing discussions, we do not find any merits in the impugned orders, insofar as the adjudged demands were confirmed on appellants therein. Therefore, the impugned orders are set aside and appeals are allowed in favour of the appellants.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM