CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

EXCISE MISCELLANEOUS APPLICATION No. 85382 of 2024
in

EXCISE APPEAL No. 85227 of 2016

(Arising out of Order-in-Appeal No. CD/661/RGD/2015 dated 18.06.2015 passed by Commissioner of Central Excise (Appeals), Mumbai Zone-II, Mumbai.)

Bharat Petroleum Corporation Limited **.....Appellants**
Mumbai Refinery, Mahul
Mumbai – 400 074.

VERSUS

Commissioner of Central Excise **.....Respondent**
Mumbai-II Commissionerate
9th Floor, Piramal Chambers,
Jijibhoy Lane, Lalbaug, Parel
Mumbai - 400 074.

WITH

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APPEARANCE:

Ms. Mansi Patil, Advocate for the Appellants
Shri Xavier Mascarenhas, 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/86271/2025

Date of Hearing: 27.03.2025
Date of Decision: 14.08.2025

PER : M.M. PARTHIBAN

This appeal has been filed by M/s Bharat Petroleum Corporation Limited (BPCL), Mumbai Refinery, Mahul, Mumbai (herein after, referred to as 'the appellants'), assailing Order-in-Appeal No. CD/661/RGD/2015 dated 18.06.2015 (herein after, referred to as 'the impugned order') passed by Commissioner of Central Excise (Appeals), Mumbai Zone-II, Mumbai.

2. The miscellaneous application being No. E/Misc./85382/2024 has been filed by the Revenue seeking change in the name and address of the respondent to "*Commissioner of Central Goods Service Tax & Central Excise, Navi Mumbai*" having the office of the Commissionerate at the address "*16th Floor, Satra Plaza, Sector 19-D, Palm Beach Road, Vashi, Navi Mumbai-400 705*", due to change in the territorial jurisdiction after introduction of GST regime vide Notification No.13/2017-C.E. (N.T) dated 09.06.2017 and as the appellants-assessee falls in their jurisdiction. As the revised name and address of the respondent correctly reflect the revised jurisdictional departmental authorities under whose jurisdiction the appellants-assessee is functioning for the purpose of Central Excise, the miscellaneous application is allowed. Registry is directed to carry out the necessary changes for record purpose.

3.1 Briefly stated, the facts of the case are that the appellants herein is, *inter alia*, engaged in the manufacture and sale of petroleum products classifiable under Chapter 27 of the Central Excise Tariff Act, 1985, obtained from their petroleum refinery located at Mahul, Mumbai. For this purpose they are duly registered with jurisdictional Central Excise department with Registration No. AAACB2902MXM036. The petroleum products are removed from the refinery under warehousing bond, without payment of duty to other warehouses by following the procedure prescribed by the Central Board of Excise and Customs (CBEC) in Circular No.579/16/2001-CX dated 26.06.2001 governing the movement of goods to which warehousing provisions have been extended in exercise of the powers conferred under sub-rule (2) of Rule 20 of the Central Excise (No.2) Rules, 2001. Subsequently, at the time of clearance of the petroleum products from the warehouse, the appellants pay the applicable Excise duty.

3.2 Petroleum products are highly volatile and hence losses occur in its transit and storage, on account of the vagaries of nature like variation in temperature, density etc. CBEC vide Circular dated 26.06.2011 had prescribed a detailed procedure for removal of petroleum products without payment of duty under AR-3A from one warehouse to another, warehousing certificate to be produced by the appellants, wherein the jurisdictional Central Excise Officer in charge at the consignee's end would certify the receipt of actual quantity and send it to the jurisdictional superintendent in charge of the appellants i.e., consignor. Such re-warehousing certificate, duly endorsed by the consignee is required to be produced within 90 days of the removal of goods; upon receipt of such certificate, the appellants-assessee was required to pay the duty and interest, on Short received quantity or non-received quantity, if any, without being demanded by the Department. Further, CBIC had also prescribed an allowance for shortage of the actual quantity received on account of transit class upto maximum ceiling of 1% in case of Naphtha/Motor Spirit and 0.5% in case of a HSD/Refined diesel oil.

3.3 During the disputed period covering April, 2000 to October, 2003, the jurisdictional Central Excise officers have raised the Central Excise duty demands in respect of short received quantities of petroleum products at the warehousing stations, in 12 Show Cause Notices (SCNs). The original authority in adjudication of the aforesaid SCNs had partly confirmed the demand of duty under Section 11A of the Central Excise Act, 1944, in respect of shortage of petroleum products received at the warehousing station, which is over and above the permissible percentage of loss at 1% and dropped the demands in respect of shortage of quantity within the permissible 1% transit loss. Further, he confirmed payment of interest on such duty demands under Section 11AB *ibid*, except in two SCNs where interest was demanded under Section 11A *ibid* and in those cases, the appellants had paid the confirmed duties within the prescribed period of three months, thereby arising no occasion for payment of interest thereon. Besides the above, the original authority had imposed penalty on the appellants under Rule 173Q of the Central Excise Rules, 1944 and Rule 20 of Central Excise Rules, 2002. Being aggrieved with the aforesaid orders of the original authority, the appellants have filed an appeal before the Commissioner of Central Excise (Appeals), Mumbai Zone – II, who vide Order dated 22.02.2006 had upheld the orders of the original authority in respect of duty demands, and set aside the order in respect of penalties imposed on the appellants by holding that the same were not warranted, as they became liable to payment of duty along with interest. Feeling aggrieved with the above order to the extent of payment of interest on the duty amount paid by them on the transit losses which are in excess of the condonable limit of 1%, the appellants had filed an appeal before the Tribunal in Appeal No. E/954/ 06-Mum. which was disposed of by passing Order No. A/106/14/SMB/C-IV dated 03.01.2014, by remanding the matter back to the adjudicating authority for considering the issue afresh in accordance with the law.

3.4 On the basis of above directions of the Tribunal, the original authority vide Order Nos. 15-26/GS/ADDL/M-II/2014-15 dated 30.09.2014, had confirmed the demands for payment of interest in respect of 10 SCNs. In an appeal filed by the appellants against the above order, the learned Commissioner of Central Excise (Appeals), Mumbai Zone – II vide impugned order dated 18.06.2015 had upheld the orders of the original authority and rejected the appeal filed by the appellants. Feeling aggrieved with the aforesaid order, the appellants have filed this appeal before the Tribunal.

4. We have heard both sides and perused the case records and additional paper books submitted in this case by both sides.

5.1 The issue involved herein is to decide,-

(i) whether, the appellants are liable to pay interest under Section 11AB of the Central Excise Act, 1944, on the duty demanded on transit loss occurred in clearance of petroleum products from the refinery to the warehousing locations, without payment of duty, or otherwise, during the disputed period; and

(ii) whether demand of interest under Section 11AB *ibid*, during the part period 01.04.2000 to 10.05.2001 (out of the total disputed period of April, 2000 to October, 2002) is legally sustainable, when the same is not applicable on account of the amendment vide Finance Act, 2001 coming into force from 11.05.2001 and the lower authorities having dropped the penalty on the appellants?

5.2 In order to address the above issue of charging of interest on the duty demands confirmed in adjudication orders under Section 11A *ibid*, we would like to refer the relevant legal provisions contained in Sections 11AA and 11AB of the Central Excise Act, 1944 during the relevant time of dispute. The relevant provisions are extracted and given below:

CENTRAL EXCISE ACT, 1944

Section 11AA. Interest on delayed payment of duty. —

(1) Subject to the provisions contained in section 11AB, where a person chargeable with duty demanded under sub–section (2) of section 11A, fails to pay such duty within three months from the date of such determination, he shall pay, in addition to the duty, interest at such a rate not below eighteen per cent. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, on such duty from the date of expiry of the said period of three months till the date of payment of such duty:……

(Prior to Finance Act, 2001 i.e., upto 10.05.2001)

Section 11AB. Interest on delayed payment of duty. —

(1) Where any duty of excise has not been levied or paid or has been short–levied or short-paid or erroneously refunded ***by reason of fraud, collusion or any wilful mis–statement or suppression of facts, or contravention of any of the provisions of this Act or the rules*** *made thereunder with intent to evade payment of duty, the person liable to pay duty as determined under sub–section (2) of section 11A shall, in addition to the duty, be liable to pay interest at such a rate not below eighteen per cent. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the duty to have been paid under this Act or the rules made thereunder or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-section (2) of section 11A, till the date of payment of such duty.*

(2) For the removal of doubts, it is hereby declared that the provisions of sub-section (1) shall not apply to cases where the duty became payable before the date on which Finance (No.2) Bill, 1996 receives the ascent of the President…..

CENTRAL EXCISE ACT, 1944

(Post amendment by Finance Act, 2001 i.e., from 11.05.2001)

*"**Section 11AB. Interest on delayed payment of duty.*** —
(1) Where any duty of excise has not been levied or paid or has been short–levied or short-paid or erroneously refunded, the person liable to pay duty as determined under sub–section (2), or has been the duty under sub-section (2B), of section 11A shall, in addition to the duty, be liable to pay interest at such a rate not below eighteen per cent. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the duty to have been paid under this Act or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-section (2),

or sub-section (2B), of section 11A, till the date of payment of such duty.

xxx xxx xxx xxx

(2) The provisions of sub-section (1) shall not apply to cases where the duty had become payable or ought to have been paid before the date on which Finance Bill, 2001 receives the ascent of the President…"

5.3 From plain reading of the above legal provisions, it transpires that Section 11AA *ibid*, provide for payment of interest upon determination of duty by a Central Excise officer in terms of Section 11A *ibid*; and a period of 3 months have also been provided for payment of such duty determined. It is only in case where, the duty determined is not paid within the prescribed 3 months, then the question of charging interest arises at the prescribed rate. As regards Section 11AB *ibid* is concerned, prior to 11.05.2001, payment of interest from the due date was applicable only in cases, where the duty is determined on account of fraud, collusion or any wilful mis–statement or suppression of facts, or contravention of any of the provisions. However, subsequent to the amendment introduced through Finance Act, 2001, payment of interest in all cases was made applicable from the first day of the month succeeding the month in which the duty to have been paid under this Act. Further under sub–section (2) of Section 11AB *ibid* has also been specifically provided that the changes brought as above shall not be applicable to cases where the duty had become payable are to have been paid before the enactment of the Finance Bill, 2001 i.e., demands prior to 11.05.2001.

6. In the present case, the facts are not in dispute that the appellants had paid the duty demands confirmed by the original authority within the prescribed period of 3 months. Further, the authorities below during adjudication of the disputed demands have dropped the proposal for imposition of penalty on the appellants. The facts on record also show that the appellants have followed the procedure prescribed by the CBIC in transferring petroleum products from their refinery to the warehousing stations without payment of duty, and subsequently on clearance of such products from their warehouses, they had paid the applicable excise duty. Accordingly, the authorities below have also held that there is no case of short payment of duty arising on account of fraud, collusion or any wilful mis–statement or suppression of facts, or contravention of any of the provisions, and thus dropped the proposal for imposition of penalty on the appellants. From the above, it clearly emerges that the provision of

Section 11AB ibid, both for the period prior to 11.05.2001 and subsequent to 11.05.2001, does not arise in the case of appellants. Therefore, we are of the considered view that the appellants having made the payment of short-paid duty, on account of transit loss to the extent it was above the permissible/condonable limit, within the prescribed period of three months, and as there is grounds of duty liability arising on account of fraud, collusion or wilful mis–statement or suppression of facts, or contravention of any legal provisions, there is no basis/reason for demanding interest on the demands confirmed by the authorities below.

7.1 We find that in an identical set of facts arising in the case of *Indian Oil Corporation Limited Vs. Commissioner of Central Excise, Mumbai-II* in *Central Excise Appeal No. 69 of 2016* reported in 2018 (359) E.L.T. 180 (Bom.), the Hon'ble Bombay High Court have delivered their judgement dated 18.09.2017, where they have upheld the order of the Tribunal and rejected the department's appeal for demand of duty, interest and penalty on account of transit loss of petroleum products. The relevant paragraphs in the said order is extracted and given below:

> ***"3.*** *In adjudication proceedings, the Commissioner dropped the demand for the extended period. However, he confirmed the demand for the period from December 2008 to March 2009. He confirmed the demand for the said period and interest. Penalty of Rs. 8,37,482/- was imposed. Being aggrieved by the said order of the adjudication Authority, an appeal was preferred by the appellant before the Appellate Tribunal. The Appellate Tribunal disposed of the appeal by permitting the appellant to compute duty after taking benefit 0.1% permissible limit on account of various losses and to pay differential amount and interest. The Tribunal by the impugned order proceeded to set aside the imposition of penalty.*
>
> *xxx xxx xxx xxx*
>
> ***6.*** *In the present case, the submissions made across the bar on behalf of the appellant have been recorded in detail in paragraph 2 of the impugned Judgment and Order which read thus :*
>
> > *"2. Ld. Counsel submits that in view of this 1% transit loss may be allowed. …... It was further submitted that though the ld. Commissioner has held that Cenvat credit availed and utilized on short receipt in excess of 0.1% is sustainable but has confirmed the demand without extending the benefit of 0.1%."*
>
> ***7.*** *The law is very well settled. If the case of the appellant was that either the submissions have not been correctly recorded or that some of the submissions actually made before the Appellate Tribunal were not recorded and not dealt with, the remedy available for the appellant was before the Appellate Tribunal. Only on the basis of the letter addressed by the Cen.-Ex. Services, the Consultants appointed by the appellant, we cannot accept the contention that what is recorded in paragraph 2 of the Judgment is not correct. Paragraph 2 records the*

submissions which were made across the bar before the Appellate Tribunal and therefore, only on the basis of the said letter, we are unable to accept the contention that the submissions have not been correctly recorded by the Appellate Tribunal in the impugned Judgment.

8. *In paragraph 5 of the Judgment, the Appellate Tribunal has relied upon a copy of the manual of departmental instructions on excisable manufactured products. In the said manual, different limits have been prescribed for different goods and different methods for transfer, etc. The Tribunal relied upon the statement produced by the appellant and noted that it provides that in case of lubricating base oil, permissible limit is 0.1%. The Tribunal held that the limit of 0.1% is in accordance with the direction of the Central Board of Excise and Customs on the subject. Reliance placed in this appeal on the letter dated 30th October, 1985 addressed by the Central Board of Excise and Customs to all te Collectors of Cetral Excise.*

9. *Firstly, before the Appellate Tribunal, the appellant never relied upon the said letter. Secondly, the said letter specifically refers to the mineral oil. If the appellant wanted to rely upon the said letter, it was for the appellant to produce the said letter before the Appellate Tribunal and satisfy the Tribunal that the lubricating base oil is also a mineral oil. The question of fact whether the lubricating base oil is mineral oil or not cannot be adjudicated upon in this appeal for the first time.*

10. *As noted earlier, the Tribunal has relied upon the the material produced by the appellant itself. It appears from paragraph 2 of the Judgment that the appellant relied upon the decision of a Division Bench of this Court in the case of Hindustan Petroleum Corporation Limited v. Union of India [2012 (286) E.L.T. 505 (Bom.)]. The Division Bench was dealing with Naphta and in paragraph 9, the Division Bench observed that it is not in dispute that the transit loss in case of Naphta is permitted to the extent of 0.1% and therefore, this decision will not help the appellant. In the present case, 0.1% is considered by the Division Bench on the basis of the admitted position. In the present case, the Tribunal has followed the Circular of the Board dated 30th April, 1971. Therefore, the Tribunal has granted benefit of 0.1% under the impugned Judgment and order.*

11. *Five different orders relied upon by the appellant which are part of the compilation tendered by the learned counsel for the appellant are not precedents. The first order is dated 4th July, 2008. By the said order, no law is laid down. Moreover, there is nothing in the said order to indicate that the Authority was dealing with the lubricating base oil. The second order is dated 28th March, 2013 passed by the Commissioner of Central Excise. The said order relies upon the decision of the Division Bench of this Court in the case of Hindustan Petroleum Corporation Limited (supra). The Commissioner of Central Excise has not noticed that the Division Bench was dealing with the Naphta and not the lubricating base oil. Moreover, the said decision is based on admitted position. The same is the case with the order dated 28th March, 2013 passed by the Commissioner of Central Excise. Therefore, none of the orders which are part of the said compilation* *will help the appellant. In almost all the orders, the decision of Division Bench of this Court in the case of Hindustan Petroleum Corporation Limited (supra) has been relied upon. As noted earlier, paragraph 9 of the said Judgment makes it very clear that the Division Bench proceeded on the admitted position that the transit loss of Naphta is permitted to be 1%.*

12. *In the present case, we find that no substantial question of law arises in this appeal and accordingly the appeal is dismissed."*

7.2 In this regard, we find that the appeal filed by the department against the aforesaid order of the Hon'ble High Court in Special Leave Petition (Diary No.3042/2018) was dismissed by the Hon'ble Supreme Court. The extract of the said judgement is below:

ITEM NO.31 COURT NO.3 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SPECIAL LEAVE PETITION (CIVIL) NO(S)……………………/2018
DIARY NO(S). 3042/2018
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 18-09-2017 IN CEA NO. 69/2016 PASSED BY THE HIGH COURT OF JUDICATURE AT BOMBAY)

M/S INDIAN OIL CORPORATION LTD. PETITIONER(S)
VERSUS

THE COMMISSIONER OF CENTRAL EXCISE MUMBAI II COMMISSIONERATE RESPONDENT(S)
(FOR ADMISSION AND I.R. AND IA NO.18191/2018-CONDONATION OF DELAY IN FILING)

Date : 12-02-2018 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MRS. JUSTICE R. BANUMATHI

For Petitioner(s) Mr. Guru Krishnakumar, Sr. Adv.
Mr. Hrishikesh Baruah, AOR
Ms. Radhika Gupta, Adv.
Mr. Pranav Jain, Adv.
Mr. Kshitij Paliwal, Adv.
Mr. Siddhant Kaushik, Adv.
For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Heard the learned counsel for the petitioner and perused the relevant material.

Delay condoned.

We find no merit in the present Special Leave Petition. The Special Leave Petition is accordingly dismissed.

[VINOD LAKHINA] **[TAPAN KUMAR CHAKRABORTY]**
AR-cum-PS **BRANCH OFFICER**

8.1 In view of the above judgement delivered by the Hon'ble Supreme Court, we are of the considered view that the dispute is no more open for any debate and the impugned order does not stand the scrutiny of law.

8.2 On the basis of foregoing discussions and analysis, we are of the considered view that the impugned order dated 18.06.2015 confirming the demand of interest on the appellants, is not legally sustainable.

9. In the result, the impugned order dated 18.06.2015 is set aside, and the appeal is allowed in favour of the appellants.

(Order pronounced in the open court on 14.08.2025)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha