IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :: 11.06.20015

CORAM ::

THE HON'BLE MR. JUSTICE R. SUDHAKAR
AND
THE HON'BLE MS. JUSTICE K.B.K. VASUKI

C.M.A. NO: 3113 OF 2008

The Commissioner of Central Excise
Coimbatore. ... Appellant

-vs-

1. M/s. Hindustan Petroleum
Corporation Ltd.
Irugur Post
Coimbatore - 641 103.

2. The Customs, Excise and Service
Tax Appellate Tribunal,
South Zonal Bench
Shastri Bhavan Annex
No: 26 Haddows Road
Chennai - 600 006. ... Respondents

Civil Miscellaneous Appeal under Section 35 G of the Central Excise Act, 1944, against Final Order No: 150 to 152 of of 2007 dated 09.02.2007 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai - 6.

For appellant :: M/s. S. Xavier Felix

For respondents :: M/s. G. RM. Palaniappan

J U D G M E N T

(Judgment of the Court was
delivered by R. Sudhakar, J.)

Aggrieved by the order of the Tribunal in allowing the appeal filed by the assessee, the Revenue/appellant is before this Court by filing the present appeal. Though this matter was admitted on 16.10.2008, no question of law had been framed by this Court. However, now the following substantial question of law is framed for consideration:-

" Whether for the purpose of invoking the provisions of Section 11 D, one need to be a manufacturer of goods or would it suffice if he is liable to pay duty of excise. The refinery/depots/installations of the Oil Companies are extended arms of the respective companies and have to be treated as a single entity?."

2. The facts leading to the present appeal in nutshell are as follows:

The assessee, M/s. Hindustal Petroleum Corporation Ltd. Irugur, (hereinafter referred to as HPCL) holds Central Excise Registration Certificate for storage and sale of duty paid / bonded petroleum products. HPCL receives duty paid Motor Spirit and High Speed Diesel from their installations at Cochin and Mangalore and effect sales to their retail outlets and to certain direct customers falling within its catering jurisdiction. The sale price of Petroleum Products are determined under the Administered Price Mechanism regardless of the source of supply. Prevailing prices under the Administered Price Mechanism are communicated to the terminals / installations / locations / depots of the Oil Companies and comes into effect immediately from the date of price revision. According to the Department, whenever there had been a price revision or increase in the rate of duty on the petroleum products, the assessee had collected amounts representing Central Excise Duty from their buyers, in excess of the Central Excise duty paid by them at the time of clearance from their installations or on the stocks lying with them or on stock in transit on the date of price revision / rate of duty revision, and that the amount so collected in excess was not credited to the Central Government Account. Therefore, after quantifying a sum of Rs.1,39,86,872/- as duty collected by the assessee representing excise duty in excess of the duties paid by them), a show cause notice dated 10.10.2002 came to be served on the assessee alleging contraventions to the provisions of Section 11 D of the Central Excise Act, 1944. The Commissioner of Central Excise, Coimbatore, vide his order dated 15.03.2004, confirmed the demand. Challenging the same, the Oil Marketing Companies viz. IOCL, HPCL and BPCL approached the Tribunal.

3. The case of the respondent/assessee before the Tribunal is as follows :

" In these appeals, the assessees have argued that to demand an amount from a person under Section 11D, the following conditions have to be satisfied :

(a) The person should be liable to pay duty.

(b) The amount had to be collected by any person on excisable goods.

(c) That person should have collected any amount from the buyer of such excisable goods in any manner as representing the duty of excise. "

4. Section 11 D of the Central Excise Act, 1944 reads as follows :

" (1) Notwithstanding anything to the contrary contained in any order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder, every person who is liable to pay duty under this Act or the rules made thereunder, and has collected any amount in excess of the duty assessed or determined and paid on any excisable goods under this Act or the rules made thereunder from the buyer of such goods in any manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government.

(2) ....

(3) ....

(4) The amount paid to the credit of the Central Government under sub-section (1) or sub-section (3) shall be adjusted against the duty of excise payable by the person on finalization of assessment or any other proceedings for determination of the duty of excise relating to the excisable goods referred to in sub-section (1). "

5. The Tribunal held that in terms of Section 11D of the Act, the demand can only be made from the manufacturer of the goods and if any duty amount is collected in any manner as representing duty of excise. For arriving at such a decision, the Tribunal has placed reliance on the decisions rendered in,

1. HPCL Ltd. vs. CCE, Aurangabad [2003 (162) ELT 391]
2. BPCL Ltd. vs. CCE, Raiput [2002 (144) ELT 672] and
3. BPCL vs. CCE [2003 (158) ELT 833]

6. It is reported by the learned counsel on either side that subsequently, the issue has been finally put to rest by the Supreme Court in the case of Commissioner of Customs and Central Excise, Bhopal vs. Indian Oil Corporation Limited reported in 2014 (302 ELT 234 (M.P.). Therefore, since we find that the issue had already been resolved by the Supreme Court in favour of the assessee, nothing remains to be considered in this appeal.

7. Accordingly, the civil miscellaneous appeal fails and the same is dismissed. However, in the circumstances of the case, there shall be no order as to the costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

Customs, Excise and Service
Tax Appellate Tribunal,
Shastri Bhavan Annex
No: 26 Haddows Road
Chennai - 600 006.

+1cc to Mr.S. Xavier Felix, Advocate, S.R.No.28946

+1cc to the Government Pleader, S.R.No.28760

VSN(CO)
EU(14/08/2015)

C.M.A. No: 3113 of 2008