IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CEA No.44 of 2014 (O&M)
Date of decision: 19.03.2015

Commissioner Central Excise Commissionerate, Rohtak

....Appellant

Versus

M/s Indian Oil Corporation Ltd. Panipat

......Respondent

CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Sukhdev Sharma, Advocate, for the appellant.

Mr.Jagmohan Bansal, Advocate, for the respondent.

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G.S.Sandhawalia J.

1. The present appeal has been filed under Section 35G of the Central Excise Act, 1944 (for short, the 'Act'), arising out of Excise Appeal No.E/449/2008, against the order dated 27.11.2013 (Annexure A3), passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi (for short, the 'Tribunal'). The following substantial questions of law have been raised by the appellant in the present appeal:

i) Whether the Ld. Tribunal was right in allowing the benefits of Exemption Notification No.6/2002- CE dated 01.03.2012 and the Notification No.15/2003-C.E., dated 01.03.2003 to the Respondent when the conditions stipulated under the said notification(s) were not complied with by the respondent?

ii) Whether the Ld. Tribunal was right to treat the duty paid clearance of Ethanol Blended Petrol (EBP) as the duty paid clearance of Motor Spirit, in spite of different separate characteristics?

iii) Whether the Ld. Tribunal was right in treating the documents (invoices) generated for clearance of Ethanol Blended Petrol (EBP) as invoices pertaining to clearance of Motor Spirit, though exchange of invoices are not permissible?

2. The Tribunal, vide the impugned order, while placing reliance upon the judgment rendered by the CESTAT, West Zonal Bench, Ahmedabad, in the case of the respondent-assessee, reported as ***Indian Oil Corporation Ltd. Vs. Commr. Of C.Ex., Vadodara 2011 (263) E.L.T. 698***, allowed the appeal and set aside the demand created by the Commissioner vide order dated 07.12.2007 (Annexure A2).

3. The respondent-Corporation, who is engaged in the manufacturing of petroleum products, was issued a show cause notice dated 10.05.2007 (Annexure A1), by the office of the Commissioner of Central Excise, Rohtak on the ground that 5% EBP was exempted from payment of whole of central excise duty upto 30.06.2004 vide No.6/2002-CE dated 01.03.2002 (as amended), under notification No.28/2002-CE dated 13.05.2002 (as amended) from Spl.A.E.D. and under notification No.15/2003-CE dated 01.03.2003 (as amended) from AED. The said notifications were further amended and exemptions were granted vide notification No.12/2004-CE dated 04.02.2004 giving exemptions upto 30.06.2004 and by notification No.37-39/2004-CE dated 04.08.2004 giving exemptions from 04.08.2004 and by notification No.4/2006-CE dated 01.03.2006 (as amended). As per the show cause notice, the respondent-Corporation did not satisfy the condition regarding the duty paid character as the ethanol blended motor spirit was being prepared after the tank truck was filled with 95% unleaded MS 87 octane and 5% of ethanol from different storage tanks. The ground for denying the exemption was that the invoices of unleaded motor spirit were being prepared after the tank truck was filled and the duty liability etc. was being paid at the time of removal from the factory gate. The duty on the motor spirit was being paid by the Corporation at the time of the clearance of the final product which was 5% EBP. Accordingly, as per the show cause notice, the provisions of Rule 4 of the Central Excise Rules, 2002 (for short, the 'Rules) had

been violated as the excisable goods had been removed without paying the central excise duty leviable on the final product. Similarly, Rule 6 of the Rules regarding the assessment of duty by the Corporation was alleged not to be proper and correct and as per Rule 8 of the Rules, since the excisable goods had been removed without paying full duty in the manner provided and thus, proper records were not being maintained as per Rule 10, pertaining to daily stock account. Correct invoices were not being maintained, as per Rule 11, accordingly, the show cause notice was made final against the Corporation on the ground that it was also violation of Rule 12 as proper and correct monthly periodical returns had not been filed.

4. The Commissioner, vide its order dated 07.12.2007, determined and confirmed the central excise duty under Section 11A(1) of the Act and also invoked full amount of penalty along with interest. However, the proceedings against the officials were dropped on the ground that they were employees of Public Sector Undertakings. The demand confirmed reads as under:

> "(a) Demand of Central Excise duty amounting to Rs.14,12,19,288 and Education Cess of Rs.11,34,865 totally amounting to Rs.14,23,54,153 is determined and confirmed under Section 11A (1) of the Central Excise Act, 1944 by invoking the proviso to the section and the same may be recovered from M/s IOCL, Panipat.
> (b) Penalty of Rs.14,23,54,153 is imposed upon M/s IOCL, Panipat under Section 11AC of the Central Excise Act, 1944 read with Rule 25 of the Central Excise Rules, 2002.
> (c) Interest at appropriate rate is confirmed under Section 11AB of the Central Excise Act, 1944 and may be recovered from M/s IOCL, Panipat.
> (d) Proceedings against Mukesh Kumar, Dy. Manager (Finance) of M/s IOCL, Panipat and Bikash Chandra Kanrar, Chief Finance Manager, IOCL (Mar. Div.) NRO, New Delhi are dropped."

5. The said order, as has been noticed, has been set aside by the Tribunal placing reliance upon the judgment rendered in the case of respondent-

Corporation by the CESTAT, West Zonal Bench, Ahmedabad (supra).

6. Counsel for the appellant has submitted that the duty upon the ethanol doped petrol has been exempted provided the conditions under the notification dated 01.03.2003 are strictly complied with and the appropriate duty of excise had been paid on the motor spirit and ethanol. He, accordingly, submits that admittedly, the excise had not been paid on the motor spirit petrol but the two had been mixed and therefore, the respondent-Corporation was not entitled for the exemption and had violated the mandatory provisions. Thus, the Tribunal was in error in granting the benefit of exemption from the additional duty of excise once the mandatory conditions had not been fulfilled. He has placed reliance upon the judgment of the Apex Court in ***Eagle Flask Industries Ltd. Vs. Commissioner of C.Ex., Pune 2004 (9) LCX 235*** to submit that the conditions given in the notification had to be strictly complied with.

7. Counsel for the respondent, on the other hand, has placed reliance upon Rule 8 of the Rules to submit that admittedly, the duty on the motor spirit had been paid by the 5th day of the following month and therefore, once both the products had been stored at a common premises and the demand had been made in accordance with law at the time when the goods had been removed from the premises, there was no violation as such which would lead to the denial of exemption under the notification dated 01.03.2003.

8. After hearing counsel for the parties, we are of the view that the Tribunal was right in allowing the benefit of exemption. The notification dated 01.03.2003 reads as under:

> "Seeks to exempt 5% ethanol doped petrol from additional duty of excise, levied under section 111 of the Finance (No.2) Act, 1998- In exercise of the powers conferred by sub-section (1) of Section 5A of the Central Excise Act, 1944 (1 of 1944), read with sub-section (3) of section 111 of the Finance (No.2) Act, 1998 (21 of 1998) the Central Government, being satisfied that it is necessary in the

public interest so to do, hereby exempts 5% ethanol blended petrol that is a blend-

(a) consisting, by volume, of 95% Motor spirit (commonly known as petrol), on which the appropriate duties of excise have been paid and, of 5% ethanol on which the appropriate duties of excise have been paid; and

(b) conforming to Bureau of Indian Standards specification 2796, from the whole of the additional duty of excise leviable thereon.

Explanation.- For the purposes of this exemption "appropriate duties of excise" shall mean the duties of excise leviable under the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), the additional duty of excise leviable under the Finance (No.2) Act, 1998 (21 of 1998), and the special additional excise duty leviable under section 147 of the Finance Act, 2002 (20 of 2002), read with any relevant exemption notification for the time being in force.

2. This notification shall remain in force up to and inclusive of the 29th day of February, 2004."

9. As noticed, the benefit is given to the final product, i.e., 5% ethanol doped petrol (EBP) which is a blend of 95% motor spirit(petrol) and 5% ethanol. Both the said products were being stored in the premises of the refinery of the assessee and on the ethanol, the excise duty had been paid whereas on the motor spirit, the excise duty was not paid at the time of mixing the two, before the EBP was taken out from the factory/refinery premises. However, it is common case of the parties that as per Rule 8, the said duty has been paid on motor spirit (petrol) also, within the required period by 5th day of the following month. Once that is so and the duty has also been paid, it would be too technical a default to penalise the Corporation on the ground that the duty should have been paid prior to the mixing and therefore, deny it the benefit of exemption. It is not the case of the appellant-Department that thereafter, there was non-payment of the excise duty upon the motor spirit and therefore, the Tribunal was right in following its earlier view of the co-ordinate Bench of Ahmedabad, wherein it has been held that as per Rule 8, the duty liability shall be deemed to have been discharged and the

amount payable is credited to the account of the Central Government by the specified date. Rule 8 reads as under:

> "Rule 8. Manner of payment. - [(1) The duty on the goods removed from the factory or the warehouse during a month shall be paid by the 6th day of the following month, if the duty is paid electronically through internet banking and the 5th day of the following month, in any other case] :
>
> xxxx xxxx xxxx
>
> Explanation.- For the purposes of this rule,-
>
> (a) the duty liability shall be deemed to have been discharged only if the amount payable is credited to the account of the Central Government by the specified date;"

10. The judgment relied upon by the appellant-Department in the case of **Eagle Flask Industries Ltd.** (supra) would not be applicable in the present case. In the said case, the manufacturers had failed to comply with the requirement of submitting the declaration and to give the undertaking as per the form annexed and accordingly, it was held that it was not an empty formality and it was the foundation for availing the benefits under the notification and the procedural requirements could not be held to be without any consequences which would normally deny the benefit of the notification. The authorities below had concurrently found against the assessee and the said order was, thus, upheld by the Apex Court and therefore, reliance upon the same is of no avail to the appellant.

Resultantly, the substantial questions of law which are sought to be raised, do not arise in the facts and circumstances of the present case. The appeal is, accordingly, dismissed.

(S.J.Vazifdar)
Acting Chief Justice

(G.S.Sandhawalia)
Judge

19.03.2015
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