560 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 61 of 2013 (O&M)
Date of decision : July 21, 2016

Commissioner Central Excise Commissionerate, Panchkula

.....Appellant

Versus

M/s Indian Oil Corporation, Ambala ....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Amit Goyal, Advocate
for the appellant.

Mr. Jagmohan Bansal, Advocate
for the respondent.

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RAJESH BINDAL, J.

The present appeal filed by the Revenue was admitted for consideration of the following substantial question of law:-

> i) Whether the Central Excise Duty paid on transaction value arrived at on the quantity of petroleum products at normal temperature room temperature converted to the notional temperature of 15 degree temperature amounts to short payment of duty, and the method adopted for payment of duty, is in accordance with the provisions of the Central Excise Law?

At the very outset, learned counsel for the Assessee raised preliminary objection regarding maintainability of the appeal before this Court. Referring to Section 35G and 35L of the Central Excise Act, 1944 (for short 'the Act'), he stated that as the dispute is regarding valuation of the excisable goods, the appeal before this Court is not maintainable. He further submitted that in the impugned order the Tribunal referred to the provisions of Section 4(1) of the Act, which provides for valuation of excisable goods for the purpose of charging of duty of excise.

On the other hand, learned counsel for the appellant submitted that the issue raised in the present appeal is not regarding valuation. The issue is regarding quantum and volume of the goods.

We have heard learned counsel for the parties and gone through the file.

The Tribunal considered the issue and recorded observations in para 8 and 9 thereof, which are extracted hereinbelow:-

> 8. In order to find answer to the above question, it would be useful to have a look on Section 4(1) of the Central Excise Act, which is reproduced thus:-
>
> **4. VALUATION OF EXCISABLE GOODS FOR PURPOSES OF CHARGING OF DUTY OF EXCISE. -**
>
> (1)Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall -
>
> (a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;
>
> (b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.
>
> [***Explanation.*** - For the removal of doubts, it is hereby

> declared that the price-cum-duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum-duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods.]

9. On plain reading of the above, it is clear that for the purpose of calculating the excise duty chargeable, the price charged if it is sole consideration for the sale, would be the transaction value. Admittedly, in the instant appeals, the goods have been cleared on payment of excise duty as per the price declared in the invoices. It is not the case of the department that other manufacturing companies to whom the oil was supplied at the rate based on the volume at 15C are the related parties. It is also not the case of the Revenue that invoice price was not the sole consideration for sale or the appellant/assessee has received any other additional consideration apart from the declared sale price. Thus, in our considered view, the appellant has rightly paid the excise duty as per transaction value in terms of Section 4 of the Central Excise Act and there is no justification for allegation of under-valuation of the goods with a view to evade excise duty.

A perusal of the aforesaid paragraphs recorded by the Tribunal shows that the issue was considered in the light of provisions of Section 4 of the Act, which deals with valuation of excisable goods.

Considering the aforesaid facts, in our view, the issue being of valuation of the excisable goods, the appeal before this Court is not maintainable. Accordingly, the appeal is dismissed as not maintainable. However, the appellant, if so, advised, may avail of appropriate remedy before Hon'ble the Supreme Court.

(Rajesh Bindal)
Judge

(Lisa Gill)
Judge

July 21, 2016
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