

Gurbax Singh
2017.08.29 14:38

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CEA No. 30 of 2015
Decided on : 01.08.2017**

Commissioner of Central Excise & Service Tax, Panchkula

. . . Appellant

Versus

M/s Hindustan Petroleum Corporation Limited

. . . Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL**

PRESENT: Mr. Amit Goyal, Sr. Standing Counsel
for the appellant-revenue.

Mr. Amrinder Singh, Advocate
for the respondent-assessee.

AJAY KUMAR MITTAL, J.

1. The appellant-revenue has filed the instant appeal under Section 35G of the Central Excise Act, 1944 (in short 'the Act') against the order dated 19.01.2015 (Annexure A-3) in Appeal No. E/2506/2008 claiming the following substantial questions of law:-

- “(i) Whether Tribunal was right in holding that the Central Excise Duty cannot be demanded from the Respondent as they are not manufacturer or producer of the goods ?
- (ii) Whether the Ld. Tribunal is correct in holding that the Bonded Warehouse which receives the Non Duty paid goods and is liable to discharge duty liability on the clearance of goods, is to be treated as a dealer and the differential duty cannot be demanded from it ?
- (iii) Whether the Tribunal is right in not considering sub-rule 3 of Rule 20 of Central Excise Rules 2002, which creates

the responsibility for the payment of Central Excise Duty when the goods are cleared from the factory of production to warehouse or from warehouse to another warehouse, of the consignee?”

2. A few facts relevant for the adjudication of the controversy involved as narrated in the appeal may be noticed. The respondent – M/s Hindustan Petroleum Corporation Limited, (Marketing Division), G.T. Road, Ambala Cantt., Ambala, is engaged in storage of non-duty paid petroleum products and clearing the same from bonded warehouse on payment of Central Excise duty on the value of the excisable goods to wholesale buyers as well as to their own depots for onward sale of the wholesale buyers. The respondent-assessee charged the duty on whole of the quantity sold to the customers including the quantity over and above the receipt i.e. quantity of HSD due to the temperature variations and other operations. The duty so collected on excess quantity sold due to temperature variations had not been deposited with the Department. According to the appellant-revenue, the facts regarding the excess sale of HSD over and above quantity receipt of collection of central excise duty were willfully concealed from the Department and were not truly reflected in various statements/returns filed with the Department from time to time. Accordingly, departmental proceedings were initiated against the respondent-assessee and a show cause notice dated 30.12.1999 (Annexure A-1) was issued for demand of Central Excise duty of ₹38,56,734/-, which was not paid by them along with interest under Section 11 AB of the Act as well as to impose penalty under Central Excise Rules, 1944 (in short, 'the Rules') read with Section 11 AC of the Act. The adjudicating authority vide

order dated 29.08.2008 confirmed the demand of ₹38,56,734/- along with interest and imposed an equal amount of penalty on the respondent. Aggrieved by the order, the respondent-assessee filed an appeal before the Tribunal. Vide order dated 19.01.2015, the Tribunal set aside the order holding that the duty can only be demanded from the manufacturer/producer of the goods, whereas, the respondent-assessee was only a dealer. Hence, the instant appeal by the appellant-revenue.

3. We have heard the learned counsel for the parties.

4. It has been categorically recorded by the Tribunal in its order dated 19.01.2015 (Annexure A-3) that the respondent-assessee is not a manufacturer of the goods but a registered dealer and therefore, duty cannot be demanded from it. If any duty is demanded on shortages and excess of the goods found at the premises of the respondent, the same is to be demanded from the refineries, who are manufacturers of the goods. In the present case, it was not found that the respondent-assessee had procured the goods clandestinely without payment of duty. In the absence of the respondent-assessee being a manufacturer or producer of the goods, the duty demanded was not held to be valid. Thus, the appeal filed by the respondent-assessee was rightly allowed by the Tribunal. The relevant findings recorded by the Tribunal in this regard reads thus:-

“7. It is well settled principle that duty is to be demanded by the manufacturer/procedure of the goods. Admittedly in this case appellant is not the manufacturer of the goods and is only a registered dealer and it is not the allegation that appellant has procured the goods clandestinely without payment of duty. In these circumstances, as held by this tribunal in the case of

Bharat Petroleum Corporation Ltd. (supra) duty cannot be demanded from the appellant as they are not the manufacturer or producer of the goods.”

Further, it has been held in a catena of judgments that a registered dealer not being a manufacturer or producer of goods is not liable to pay duty under Section 11D of the Act. Reference may be made to the judgments in *Commissioner of Central Excise, Meerut Vs. Bharat Petroleum Corporation Ltd. 2011(272) E.L.T. 654 (S.C.)*, and *Commissioner of Central Excise, Coimbatore Vs. Hindustan Petroleum Corporation Ltd. 2015(322) E.L.T. 618 (Mad.)*.

5. Learned counsel for the appellant-revenue has not been able to point out any illegality or perversity in the findings recorded by the Tribunal or to controvert the applicability of the above decisions to the facts of the present case. Thus, no substantial question of law arises. Consequently, the appeal stands dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AMIT RAWAL)
JUDGE

August 01, 2017
'gs'

Whether speaking/reasoned:
Whether Reportable:

Yes
Yes