IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Ms.Justice R.N.MANJULA

Civil Miscellaneous Appeal No.3253 of 2008

Commissioner of Central Excise,
Salem. ...Appellant/Respondent

Vs

M/s.Bharat Petroleum Corporation Ltd.,
Sankari, Salem. ...Respondent/Appellant

Civil Miscellaneous Appeal filed under Section 35G of Central Excise Act, 1944 against the impugned order of the Hon'ble Tribunal in Final Order No.150-152/2007 dated 09.02.2007 on the file of the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai-600 006, against C.No.V/27/15/13/2004 dated 25/05/2004 on the file of the Commissioner of Central Excise, Salem-636 001.

For Appellant : Mr.V.Sundareswaran
Senior Standing Counsel

For Respondent: Mr.M.N.Bharathy
for Mr.S.Muthuvenkataraman

JUDGMENT
(Delivered by T.S.Sivagnanam,J)

This appeal filed by the revenue under Section 35G of the Central Excise Tax, 1944 [hereinafter referred to as "CST Act"] is directed against the order dated 09.02.2007 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai ['the Tribunal' for brevity] in Final Order No.152/2007.

2.The revenue has raised the following substantial questions of law for consideration:

"a) Whether the Appellate Authority is correct in holding that the respondent cannot be

demanded for the excess duty collected at the Depot on the revised rates, under Section 11D of the Central Excise Act, 1944?

b)Whether for the purpose of invoking the provisions of Section 11D, it is suffice if the respondent is liable to pay duty on the ground that the refinery/depots/installations of the respondents are extended arms of the respondent company and therefore requires to be treated as a single entity?

c)Whether the Appellate Authority is correct in not rendering a finding on the admitted fact that the invoice raised at the depot of the respondent against its buyer which reflected the excise duty collected there at is liable to be paid to the Government?"

3.We have heard Mr.V.Sundareswaran, learned Senior Standing Counsel appearing for the appellant/revenue and Mr.M.N.Bharathy, learned counsel appearing for the respondent/assessee.

4.We need not labour much to take a decision in this appeal as the issue has already been dealt with by the Hon'ble Division Bench of this Court in the case of *Commissioner of Central Excise, Coimbatore vs. M/s.Hindustan Petroleum Corporation Ltd. [2015 (322) ElT 618 (Madras)]*.

5.The learned senior standing counsel sought to distinguish the said decision. However, such an attempt has to fail because the impugned order was a common order passed in three cases concerning the Oil Companies, namely, HPCL, IOCL, BPCL. The appeal filed by the revenue challenging the very same impugned order in so far as it relates to the demand against HPCl has been dismissed in the aforementioned judgment. The operative portion of the judgment reads as follows:

"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 for the provisions of Section 11D of the Central Excise Act, 1944. The Commissioner of Central Excise, Coimbatore, vide his order dated 15-3-2004, confirmed the demand. Challenging the same, the Oil Marketing Companies viz. IOCL, HPCL and BPCL approached the Tribunal.

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. v. CCE, Aurangabad [2003 (162) E.L.T. 391]

2. BPCL Ltd. v. CCE, Raipur [2002 (144) E.L.T. 672] and

3. BPCL v. CCE [2003 (158) E.L.T. 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 (sic) in the case of Commissioner of Customs and Central Excise, Bhopal v. Indian Oil Corporation Limited reported in 2014 (302) E.L.T. 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.Commissioner of Customs and Central Excise, Bhopal v. Indian Oil Corporation Limited reported in 2014 (302) E.L.T. 234 (M.P.)*

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."

6.As noted by the Division Bench, the facts were common and the challenge by all the Oil Companies, namely, IOCL, HPCL and BPCL were identical before the Tribunal. In the light of the above, we cannot be compelled to take a different view in this matter as the impugned order has already been upheld at the instance of the another Oil Company and the facts being identical.

7.For all the above reasons, the appeal filed by the revenue is dismissed and the substantial questions of law are answered in favour of the assessee. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

cse

To
1.Customs, Excise & Service Tax Appellate Tribunal,
South Zonal Bench, Chennai -600 006

2.The Commissioner of Central Excise,
Foulks Compound, Anai Road,
Salem-636 001.

+1cc to Mr.S.Muthu Venkataraman, Advocate, S.R.No.16010

C.M.A.No.3253 of 2008

NR(CO)
KM(17/04/2021)