2010-TIOL-895-CESTAT-KOL

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EAST ZONAL BENCH, KOLKATA

Excise Appeal No.EDM-107/2006

Arising out of the Order-in-Appeal No.92/SLG/2005 Dated : 30.11.2005
Passed by the Commissioner, Central Excise (Appeals), Kolkata

Date of Decision : 13.4.2010

CCE, SILIGURI

Vs

M/s BHARAT PETROLEUM CORPN LTD

Appellant Rep by: Shri J A Khan, SDR
Respondent Rep by: Shri Ravi Raghavan, Adv.

CORAM: S S Kang, VP
M Veeraiyan, Member(T)

Central Excise – Valuation of petroleum products cleared through company owned retail outlets – Law envisages that price of the greatest aggregate quantity of goods sold on the date of removal to be adopted while paying duty at the time of removal from factory gate – Subsequent sale at a later point of time and the actual sale price thereof, not relevant for determining assessable value – No infirmity in Appellate Commissioner's order

Revenue appeal rejected

ORDER NO.A-257/KOL/2010

Per: M Veeraiyan:

This is an Appeal by the Department against the Order No.92/SLG/2005 dated 30.11.2005 passed by Commissioner of Central Excise (Appeals), Kolkata-IV.

2. Heard both sides.

3. The relevant facts in brief are that the Respondents effected transfer of petroleum products from their installation to their Company Owned Company Operated (COCO) Outlet. The Original Authority held that in respect of sales made from COCO Outlets, the charges collected by them in the name of COCO charges should be added to the assessable value and accordingly, demanded differential duty of Rs.5,08,355.00 along with the interest and imposed equal amount of penalty under Section 11AC. On appeal by the Party, the Commissioner (Appeals) set aside the Order of the Original Authority and hence, the Department is in appeal.

4. Learned S.D.R. reiterating the Grounds of Appeal seeks setting aside the Order

of the Commissioner (Appeals) and restoration of the Order of the Original Authority. He also submits that while the Respondents made aware of the clearances to their COCO Outlets, they did not inform the Department about the extra collections made from the Outlets and therefore, the Order of the Original Authority holding that there was suppression of facts, should be upheld.

5.1. Learned Advocate for the Respondents submits that the period of dispute from December, 2001 to July, 2003 is required to be considered in three different categories, i.e.from December, 2001 to March, 2002; from April, 2002 to January, 2003; and the period after January, 2003. He submits that for the period upto March, 2002, the Paragraph 26 of Board's clarification in F.No.354/81/2000/TRU dated 30.06.2000, is applicable and accordingly, duty is required to be paid at prices fixed by the Oil Coordination Committee. The duty has been paid accordingly, and therefore, no differential duty can be recovered, as held by the Original Authority.

5.2. Regarding the period from April, 2002 to January, 2003, ld. Advocate submits that, as held by the Commissioner (Appeals), they have paid duty by adopting the transaction value of the greatest aggregate quantity of the goods sold at the COCO Outlets and therefore, there is no further differential duty involved.

5.3. Ld. Advocate also submits that, for the period from February, 2003, the Respondents have acted only as a trader and resold the petroleum products sold to them by IOC.

5.4. Inasmuch as the Commissioner (Appeals) has dealt with all these issues separately and correctly, he seeks upholding the Order of the Commissioner (Appeals). He further submits that the Order of the Commissioner (Appeals) on the time-bar aspect has also to be upheld.

6. We have carefully considered the submissions from both sides and perused the Grounds of Appeal. The Commissioner (Appeals) has dealt with the issues under the three categories for the three different periods, as mentioned by the learned Advocate for the Respondents. The factual basis on which the Commissioner (Appeals) has taken the decision, is not being disputed by the Department. We do not find any infirmity in the conclusion reached by the Commissioner (Appeals) in respect of each of the above periods. Further, we notice that the fact of removal to the COCO Outlets are undisputedly with the knowledge of the Department. In respect of clearances made to the depot (assuming that COCO Outlet has to be treated as a depot), the submission of the Department that the entire extra collection should be added to the assessable value, is contrary to the legal provisions. The assessment of goods transferred to the depot is required to be done at the time and place of removal. The goods removed to the depot may be sold after a lapse of time and it could be considerable time, in some cases. The law envisages that the price of the greatest aggregate quantity of the goods sold on the date of removal should be adopted while paying duty at the time of removal from the factory, in this case, the installation. Subsequent sale at a later point of time and the actual sale price at the later point of time, is not relevant for determining the assessable value. This being the case, we do not find any infirmity with the Order of the Commissioner (Appeals) on merits as well as on the aspect of limitation.

7. The Appeal is, therefore, rejected.

(Pronounced and dictated in the open court.)

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