(2014) 02 CAL CK 0049

In the Calcutta High Court

Case No : C.E.X.A. Nos. 16, 20 and 21 of 2013 and G.A. Nos. 2046, 2562 and 2563 of 2013

Commissioner of Central Excise APPELLANT

Vs

Bharat Petroleum Corporation Ltd. RESPONDENT

Date of Decision : 10-02-2014

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11D

Citation : (2014) 28 GSTR 575

Hon'ble Judges : Tapash Mookherjee, J;G.C. Gupta, J

Bench : Division Bench

Advocate : R. Bharadwaj, Advocate for the Appellant; T.C. Nair, Padmavati Patil and Aparajita Ghosh, Advocate for the Respondent

Judgement

1. The court: All the three appeals were taken up together because the same involve common question of law and fact. All the three appeals are directed against a common judgment dated October 22, 2012 by which the learned Tribunal as a matter of fact disposed of 23 appeals. Three out of them have travelled to this court. The contention of the Revenue is that Bharat Petroleum Corporation Ltd., has recovered excess amount of excise duty which is payable to the Department of Revenue. This contention of the Revenue was upheld by the Commissioner, but rejected by the learned Tribunal. Aggrieved by the order of the learned Tribunal, the present appeals were preferred.

2. It is not in dispute that amounts are sought to be recovered under section 11D of the Central Excise Act. It was not disputed before us that the unit, which is sought to be made liable under section 11D of the aforesaid Act, is neither a "manufacturer" nor a "producer". It has been held by the learned Tribunal in the case of 2003 (85) ECC 36 that the expression "every person" appearing in sub-section (1) of section 11D of the aforesaid Act refers to either a "manufacturer" or a "producer". The aforesaid position in law has also been admitted by the Central Board of Excise and Customs by its circular dated February 27, 2009. The

views expressed by the learned Tribunal were unsuccessfully challenged by the Revenue. The apex court affirmed the views of the learned Tribunal. The judgment was reported in Commissioner of C. Ex., Meerut Vs. Bharat Petroleum Corporation Ltd., . The transactions being the subject matter of these appeals are for the period between June 1, 2002 and July 30, 2002.

3. In that view of the matter, the only conclusion is that the unit was not liable to pay any excise duty. There was, as such, no question of any recovery excess or otherwise. The learned Tribunal, in the circumstances, came to a correct conclusion in rejecting the contention of the Revenue.

4. No interference is, as such, called for. All the three appeals are, therefore, dismissed. The parties shall, however, bear their own costs.

