(2015) 06 MAD CK 0557

In the Madras High Court

Case No : C.M.A. No. 3113 of 2008

Commr. of C. Ex., Coimbatore APPELLANT

Vs

Hindustan Petroleum Coprn. Ltd. RESPONDENT

Date of Decision : 11-06-2015

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

Citation : (2015) 322 ELT 618 : (2015) 52 GST 221

Hon'ble Judges : R. Sudhakar, J;K.B.K. Vasuki, J

Bench : Division Bench

Advocate : S. Xavier Felix, for the Appellant; G. RM. Palaniappan, Advocates for the Respondent

Judgement

R. Sudhakar, J—Aggrieved by the order of the Tribunal [2007 (212) E.L.T. 536 (Tribunal)] in allowing the appeal filed by the assessee, the Revenue/appellant is before this Court by filing the present appeal. Though this matter was admitted on 16-10-2008, no question of law had been framed by this Court. However, now the following substantial question of law is framed for consideration:-

"Whether for the purpose of invoking the provisions of Section 11D, one need to be a manufacturer of goods or would it suffice if he is liable to pay duty of excise. The refinery/depots/installations of the Oil Companies are extended arms of the respective companies and have to be treated as a single entity?"

The facts leading to the present appeal in nutshell are as follows:

The assessee, M/s. Hindustan 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.

2. The case of the respondent/assessee before the Tribunal is as follows:

"In these appeals, the assessees have argued that to demand an amount from a person under Section 11D, the following conditions have to be satisfied:

(a) The person should be liable to pay duty.

(b) The amount had to be collected by any person on excisable goods.

(c) That person should have collected any amount from the buyer of such excisable goods in any manner as representing the duty of excise."

3. Section 11D of the Central Excise Act, 1944 reads as follows:

"(1) Notwithstanding anything to the contrary contained in any order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder, every person who is liable to pay duty under this Act or the rules made thereunder, and has collected any amount in excess of the duty assessed or determined and paid on any excisable goods under this Act or the rules made thereunder from the buyer of such goods in any manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government.

(2) ....

(3) ....

(4) The amount paid to the credit of the Central Government under sub-section (1) or sub-section (3) shall be adjusted against the duty of excise payable by the person on finalization of assessment or any other proceedings for determination of the duty of excise relating to the excisable goods referred to in sub-section (1)."

4. 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. Viteralli v. Saton, 359 US 535;

2. Bharat Petroleum Corporation Ltd. vs. Commissioner of2002 (144) ELT 672 and

3. Viteralli v. Saton, 359 US 535;

5. 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 Commr. of Cus. and C. Ex., Bhopal Vs. Indian Oil Corporation Ltd., (2014) 302 ELT 234 : (2014) 26 GSTR 310 . 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. 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.