

Indian Oil Blending Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

Decided On : Jun-27-2002

Reported in : (2002)(105)LC716Tri(Kol.)kata

Judge : A Wadhwa, A T V.K.

Appellant : Indian Oil Blending Ltd.

Respondent : Cce

Judgement :

1. In this appeal, filed by M/s Indian Oil Blending Ltd., the issue involved is whether in the facts and circumstances of the case, a penalty is imposable on them.

2.1. Shri P.K. Das, Id. Advocate, submitted that the Appellant Company is a subsidiary company of M/s Indian Oil Corporation Ltd.; that they manufacture lubricating oils/lubricating preparations; that during the normal course of delivery of the impugned goods to their depots, they have been adding "upcountry depot surcharge" at the rate of Rs. 1600/- per K.L.; that after amendment of Section 4 of the Central Excise Act with effect from 27.9.1996, they have been paying duty on the "upcountry depot surcharge"; that, however, under impression that M/s.

I.O.C., Lubefield is also a subsidiary of M/s Indian Oil Corporation, they did not consider I.O.C. Lubefield as an upcountry Depot and did not include Rs. 1600/- per K.L. in the assessable value; that when IOC Lubefield submitted their invoice

wise particulars for the account purpose, they found that IOC Lubefield was charging the said surcharge in their invoices; that as and when it came to the knowledge, they immediately prepared the reconciliation statement and paid duty of Excise on the said value as under: (i) 10.9.1998 Rs. 1,94,871.36 (ii) 23.10.1998 Rs. 34,686.72 (iii) 20.11.1998 Rs. 22,63,893.84 (iv) 27.10.1999 Rs. 18,16,757.00 (v) 18.11.1999 Rs. 1,25,950.08 _____ 2.2. The Id. Advocate, further, submitted that during the period from 25.10.1996 to 31.8.1998, I.O.C. Lubefield added upcountry depot surcharge in their value and the entire duty due thereon had been paid by them on their own; that as they themselves detected the mistake and deposited the duty voluntarily, the imposition of penalty by issuing show-cause notice on 24.4.2000 much after the payment of entire duty is totally unjustified; that the finding of the adjudicating authority that knowing fully about the charging of surcharge, they did not include the same in assessable value, is totally imaginative, absurd and unjustified; that Section 11AC of the Act is applicable only when duty has not been paid/short paid on account of fraud, suppression of facts; that as in the instant matter they themselves detected the mistake and paid duty voluntarily before issuance of show-cause notice, question of imposing penalty under Section 11AC does not arise.

Alternatively, the learned Advocate mentioned that penalty imposed is highly excessive and the same may be reduced considerably. He relied upon the following decisions: (i) Singh Traders v. Commissioner of Sales Tax, Lucknow 3. Countering the arguments, Shri A.K. Mondal, Id. D.R., submitted that duty amounting to Rs. 44, 36,158.90 had been short paid by the Appellants in respect of excisable goods cleared by them during the period from 25.10.1996 to 31.8.1998; that enquiry revealed that I.O.C Lubefield despatched lubricating oil/preparations to different depots of M/s I.O.C by adding upcountry depot surcharge; that knowing fully well about the charging of surcharge extra, they had suppressed the material fact from the Department with the intent to evade payment of duty; that accordingly provisions of Section 11AC of the Central Excise Act are applicable.

4. We have considered the submissions of both the sides. The facts which are not in dispute are that the "upcountry depot surcharge" is includible in the assessable

value of the excisable goods manufactured by the Appellants under the amended Section 4 of the Central Excise Act and the same was not included in the assessable value of the goods cleared to M/s I.O.C. Lubefield. The Appellants have contended that they did not include the said charge in the assessable value of the goods cleared to I.O.C. Lubefield under the bona fide impression that the said I.O.C. Lubefield was situated in the same locality and it should not be treated as "upcountry depot". They have also claimed that they on their own paid the duty short paid as soon as they came to know about the mistake on receipt of invoice wise particulars from M/s I.O.C. Lubefield for accounting purposes. Their claim of payment of duty on their own is belied by the documents submitted by them along with the Memorandum of Appeal. In the statement showing evasion of Central Excise duty made by M/s Indian Oil Blending Ltd. during the period from 25.10.1996 to 31.8.1998 annexed with the show-cause notice, it is clearly mentioned that "All duty paid after detection by the Excise Department on 6.8.1998." This remark written by hand clearly reveals that the short payment of duty was detected by the Central Excise Department and then, thereafter, the Appellants deposited the differential duty. The Appellants had not disclosed the fact of not including the upcountry depot surcharge in respect of supplies made to M/s IOC Lubefield to the Department and as such the same was suppressed from the Department. In view of this, the provisions of Section 11AC of the Central Excise Act are invokable and penalty is imposable on the Appellants. The decisions relied upon by the Id. Advocate are not applicable as facts are different. In DCW Ltd., penalty was held to be not imposable for a mere procedural lapse in taking modvat credit and in absence of intention to evade duty. In the present matter, there is no procedural lapse as appropriate duty of Excise was not paid before the clearance of goods. Similarly, in Singh Traders case, mistake was detected and rectified by the assessee himself which is not so in the present matter. However, taking into consideration all facts and circumstances of the case coupled with the fact that the Appellants had deposited the entire amount of duty short paid before issue of show-cause notice and following the ratio of the Tribunal's decision in Escorts JCB Ltd. v. CCE , we are of the view that penalty imposed is on the higher side. We, therefore reduce the penalty to Rs. 4 lakhs (Rupees four lakhs only) which in our view will meet the ends of justice. But for this

modification, appeal is rejected.

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