

Collector of Central Excise Vs. Indian Oil Corporation Ltd. and

Collector of Central Excise Vs. Indian Oil Corporation Ltd. and

SooperKanoon Citation : sooperkanoon.com/4239

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-15-1988

Reported in : (1988)(17)LC299Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Indian Oil Corporation Ltd. and

Judgement :

1. By the impugned order the Collector of Central Excise (Appeals), Bombay disposed of 8 appeals filed before him. As the issue involved in all these appeals is the same, they are being disposed of by this common order.

2. Shri N.V. Raghavan Iyer has argued for the respondents Indian Oil Corporation Ltd. and Shri K.V. Kunhikrishnan has argued for M/s. Bharat Petroleum Corporation Limited. None has appeared for M/s. Hindustan Petroleum Corporation Limited.

3. We have heard Shri Sunder Rajan, learned 3.D.R. for the appellant-Collector and S/Shri Raghavan Iyer and Kunhikrishnan for M/s.

Indian Oil Corporation Limited and M/s. Bharat Petroleum Corporation Limited respectively.

4. The issue involved in these appeals is whether unrebated rate of duty as prescribed in the Notification issued under Rule 12 of the Central Excise Rules, 1944 was payable in respect of Aviation Turbine Fuel supplied by the respondents

to the foreign bound aircrafts in bond under Rule 13 of the Central Excise Rules, 1944. Shri Sunder Rajan has argued that the issue involved in these appeals was already decided by this Tribunal by its earlier decisions in the case of Hindustan Petroleum Corporation Limited, Bombay v. Collector of Central Excise, Guntur, reported in 1985 (20) ELT 404 (Tribunal), and in the case of Collector of Central Excise, Calcutta v. Hindustan Petroleum Corporation Ltd., Bombay, reported in 1985 (21) ELT 904 (Tribunal). The issue was decided in those cases in favour of the Revenue. Shri Sunder Rajan has prayed that following the earlier decisions, the present appeals filed by the Revenue may be allowed.

5. Arguing for M/s. Indian Oil Corporation Limited, Shri Raghavan Iyer has stated that bulk of the demand raised against the Corporation is barred by limitation of time. Shri Kunhikrishnan has argued that notification issued under Rule 12 of the Central Excise Rules, does not refer to Rule 13 and that the notification should be strictly construed. Further, in the case of export under bond no exemption by virtue of Notification is necessary. He has, therefore, prayed for reconsideration of the earlier decisions of this Tribunal.

6. We have considered the arguments advanced before us and have also gone through the records of the case. In the case of Hindustan Petroleum Corporation Limited [1985 (20) ELT 404 (Tribunal)], this Tribunal followed the decision of Delhi High Court reported in 1981 ELT 642 (Delhi) in the case of Hindustan Aluminium Corporation Limited v. Superintendent of Central Excise, Mirzapur and Others. In the said case, the Hon'ble High Court held that in respect of export of goods under Rule 13 from bond, duty was payable to the extent required to be paid in respect of export of goods under claim for rebate of duty in terms of Rule 12 of the Central Excise Rules. Following that judgment, this Tribunal held in (Supra) that action of the lower authorities in charging duty on the light diesel oil and furnace oil exported as ship's stores in terms of Notification No. 349/77-C.E., dated 16-12-1977, operative at that time, was correct. In the second decision relied upon by the learned 3.D.R., viz., 1985 (21) ELT 904 (Tribunal), in the case of Collector of Central Excise, Calcutta v. Hindustan Petroleum Corporation, Bombay (Supra), this Tribunal, following the aforesaid decision of Delhi High Court, held that duty to the extent of unrebated rate of duty was payable on the supply of diesel oil/furnace

oil made from the bonded tanks to the foreign going vessels. Regarding the point raised by Shri Kunhikrishnan about non-applicability of Notification issued under Rule 12, we observe that Hon'ble Delhi High Court considered the issue similar to that involved in the present cases and the High Court held that even in respect of export of goods under Rule 13 from bond, duty was payable to the extent required to be paid in respect of export of goods under claim for rebate of duty in terms of Rule 12 of the Central Excise Rules. No contrary decision has been brought to our notice. We are, therefore, bound to follow the judgment of Delhi High Court. The point raised by Shri Kunhikrishnan is, therefore, rejected.

7. Shri Raghavan Iyer has argued that bulk of the demand in his case is barred by limitation. From paragraph 3 of the impugned order we observe that the plea of time-bar under Section 11A of the Central Excises and Salt Act was raised before the Collector (Appeals), but he has not given any findings on the point of limitation. We do not have necessary material to examine the point of limitation. It is, therefore, necessary to remand these matters to the lower authority for examining the question of limitation under Section 11A of the Central Excises and Salt Act, 1944 with reference to the relevant records. Following the earlier decisions (Supra), we hold that unrebated rate of duty prescribed under the Notification issued under Rule 12 of the Central Excise Rules was payable in respect of Aviation Turbine Fuel supplied by the respondents to the foreign bound aircrafts in bonds under Rule 13 of the Central Excise Rules. The impugned order is, accordingly, set aside. We, however, remand the matters to the Assistant Collector of Central Excise, Division K-I, Bombay-1, for de-novo examination on the point whether the demands raised against these respondents and covered by these appeals are barred by limitation under Section 11A of the Central Excises and Salt Act, 1944.