

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 11891 of 2016- DB

(Arising out of OIA-CCESA-VAD-APP-II-MM-99-2016-17 dated 28/06/2016 passed by Commissioner of Central Excise-VADODARA-II)

Indian Oil Corporation Ltd

Marketing Division Western Region Indian Oil Bhavan Bkc
Plot No C-33 G Block Bandra Kurla Complex Bandra East
Mumbai, Maharashtra

.....Appellant

VERSUS

C.C.E. & S.T.-Surat-ii

New C.Ex Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat,Gujarat- 395001

.....Respondent

APPEARANCE:

Shri Sachin Chitnis & Shri Kiran Charan, Advocate for the Appellant
Shri R.K. Agarwal, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. 12063/2023

DATE OF HEARING: 01.09.2023
DATE OF DECISION: 18.09.2023

RAMESH NAIR

The issue involved in the present case is that whether the refund claim filed by the appellant is barred by limitation, when the excise duty for which the refund sought for was paid under protest.

1.1 The brief facts of the case are that in respect of warehouse goods the appellant was collecting an amount under head of other charges on which excise duty was not paid. The department's contention was that the duty on such other charges is required to be paid. On the basis of the audit, the appellant paid an amount of Rs. 93,36,942/- vide TR-6 challan No. 01/2005-06 dated 03.03.2006 "under protest" and informed the department vide their letter dated 30.03.2006. Based on the favourable decision by the Hon'ble CESTAT's order No. A/1666/WZB/AHD/2011 dated

10.08.2010/29.09.2011 [2013(291) ELT 449 (Tri.- Ahmd.)] in their another Terminal at Siddhpur, the appellant filed a refund claim for Rs. 93,36,942/- vide their letter dated 18.09.2012 on the ground that the said amount was not payable and issue has been resolved in their favour. The sanctioning authority i.e. Assistant Commissioner of Central Excise, Surat, by Order-in-Original No. SRT-II/DIV-II/09/R/2014-15 dated 27.01.2015 rejected the refund claim based on the ground that CESTAT order No. A/1666/2011-WZB/AHD dated 29.9.2011 in favour of IOCL-Siddhpur has been challenged by the department and has been admitted by the Hon'ble Supreme Court and is pending.

1.2 He further held that the refund has been filed on 18.09.2012 and refund claim of duty paid on 30.03.2006 i.e. after more than 6 years. Being aggrieved by the Order-in-Original, appellant filed appeal before Commissioner (Appeals) who upheld the Order-in-Original vide the impugned order dated 28.06.2016. Hence, the present appeal filed by the appellant.

2. Shri Sachin Chitnis & Shri Kiran Charan Learned Counsel, appearing on behalf of the appellant submits that the amount was voluntarily deposited but 'under protest' at the behest of the department. Therefore, limitation under section 11B is not applicable. He placed reliance on the following judgments:

- Indian Oil Corporation Ltd. - 2013 (291) ELT 449 (Tri-Ahmd.)
do- admitted by Supreme Court - 2015 (316) ELT -27 (SC)
- Indian Oil Corporation Ltd. - CESTAT Ahmedabad Order No. A/10944/2018 dated 24.4.2018
- Indian Oil Corporation Ltd. - CESTAT Ahmedabad Order No. FO/A/11551/2023-EX [DB] dated 21.7.2023

- Nirlep Alliances Ltd. - 2018 (362) ELT 915 (Tri-Mum)
- GE Power India Ltd. - CESTAT Order No. A/12615/2021 dated 15.02.2021
- Nayara Energy Ltd. - CESTAT Order No. A/12562/2021 dated 2.12.2021
- Indian Oil Corporation Ltd. - 2019-TIOL-837-CESTAT-AHMD

2.1 He submits that even in their own case this Tribunal vide order No. A/11551/2023 dated 21.07.2023 held that the limitation is not applicable eve, in a case where the under protest letter was not submitted but the duty was paid on the objection of the audit party and subsequently the issue is already in favour of the assessee. He submits that this case is on much better footing than the case decided by Tribunal's order dated 21.07.2023.

3. Shri R K Agarwal, Learned superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impure order.

4. On careful consideration of the submission made by both the sides and perusal of record, We find that the appellant had paid the duty on the behest of the audit objection which itself is a payment of duty under protest. Moreover, the appellant have also clearly mentioned in their TR-6 challan that the payment of duty is under protest. The appellant have also submitted a letter declaring that such payment of duty is under protest. In this position limitation provided under section 11B is not applicable for refunding the Excise Duty.

4.1 It is also the contention in orders of lower authorities that the department has filed appeal before the Supreme Court against the Tribunal

order, whereby the Tribunal held that the duty paid on other charges, which is related to local Sales Tax is not payable.

4.2 We are of the view that merely by filing the appeal, appellant's refund cannot be with held which has been clarified by the Central Board of Excise Customs in various circulars from time to time, that unless until stay is obtained from the Higher Court the refund cannot be kept pending. Therefore, on both the counts, we are of the view that appellant is entitled for refund.

5. Accordingly, we set aside the impugned order and allow the appeal.

(Pronounced in the open court on 18.09.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)