**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL SOUTH ZONAL BENCH**

**CHENNAI**

**Appeal No. E/1005/2005**

[Arising out of Order-in-Appeal Nos.78/2005 (M-I) & 6/2005 (M-I) (D) both dt. 26.08.2005 passed by the Commissioner of Central Excise (Appeals), Chennai]

Chennai Petroleum Corporation Ltd. Appellant

Versus

Commissioner of Central Excise,

Chennai-I Respondent

Appearance:

Shri Raghavan Ramabhadran, Advocate

For the Appellant

Shri A. Cletus, ADC (AR)

For the Respondent

WWW.TAXSCAN.IN

CORAM :

Honble Ms. Sulekha Beevi C.S. Member (Judicial)

Honble Shri V. Padmanabhan, Member (Technical)

Date of hearing : 20.06.2017

Date of Pronouncement : 23.06.2017

WWW.TAXSCAN.IN

FINAL ORDER No. 41084 / 2017

Per Bench

The appeal is against OIA No. 78/2005 (M-I) & 6/2005 (M-I) (D) both dt. 26.08.2005. The appellant is a petroleum refinery and the dispute pertains to the period July 2000 to June 2001. Naphtha is one of the petroleum products manufactured by the appellant and is used in the Gas Turbine Plant as fuel in the generation of electricity. Refinery Fuel Oil (RFO) is used as fuel to generate steam, which in turn is used in the steam turbine generator to produce electricity. The electricity so generated is used within the factory of production. However, a part of the electricity is wheeled out to the T.N.E.B. The demand has been raised by Revenue for denying the benefit of captive consumption Notification No.67/95-CE dt. 16.03.1995 for the portion of Naphtha/RFO attributable to the electricity wheeled out to TNEB. Hence the Central Excise duty has been demanded in proportion to the quantum of electricity wheeled out .

2. With the above background, we heard Shri Raghavan Ramabhadran, Ld. Advocate and Shri A. Cletus, Ld. D.R.

3. The main grounds for challenge of the impugned order is that the Naphtha which is captively used for generation of electricity is not marketable. The ld. Advocate submitted that the plea already stands made before the original authority that the composition of Naphtha used captively is different from the Naphtha/RFO cleared on payment of duty. He further submitted that captively consumed Naphtha/RFO is a non-commercial grade and is not marketable. It has been further argued that since Naphtha itself is non-excisable, there can be no demand of duty on such Naphtha captively consumed. He further submitted that there can be no justification to impose penalty on the appellant as has been

done by the authorities below. The activity of captive consumption is very much known to the department and hence there can be no allegation of suppression.

4. Ld. D.R submitted that it is well settled that the benefit of captive consumption under Notification No.67/95 is not available for inputs consumed for generation of electricity which is wheeled out. The Naphtha/RFO which is captively consumed has been held to be marketable by the lower authorities and hence he submitted that duty demand may be upheld.

5. Heard both sides and perused the records. The dispute in the present case is about the eligibility of the exemption under Notification No.67/95-CE dt. 16.3.1995 in respect of the portion of Naphtha manufactured in the appellant's factory and captively consumed in the generation of electricity. It is further on record that a part of such electricity generated by the captive power plant is wheeled out to T.N.E.B. The lower authorities have held that the appellant will not be eligible for exemption under the above notification in respect of the portion of Naphtha attributable to that used for generation of electricity wheeled out. The demand originally raised and confirmed by the adjudication authority in the impugned order has been worked out on proportionate basis to the quantity of electricity wheeled out.

It is settled position of law that in cases where electricity generated by the captive power plant is wheeled out, the benefit of captive consumption exemption notification as well as credit on inputs will not be eligible. This aspect has also not been seriously contested by the appellant during the course of this appeal. However, the learned advocate for the appellant has raised the argument that Naphtha used in the captive power plant is not marketable and hence not excisable. It has further been argued that when the captively consumed Naphtha itself is non-excisable, there is no need to pay Excise Duty by denying the benefit of Notification No.67/95 . From the records of the case, we find that such a plea has been raised before the original adjudicating authority who has declined to accept such a claim. In the impugned order, there is no discussion on this aspect.

6. The plea of non-marketability of Naphtha has been discussed at length by the original authority as follows :

"15............They are now contesting the proposed demand on the ground that the impugned product is not marketable and hence not excisable. The product in question is not a commercial grade and the naphtha, which is being sold to MFL, and others are different. I find the plea a frivolous one. The assessee had been manufacturing naphtha and utilizing the same captively. They were also clearing a certain quantity for home consumption. At no point of time, they have informed the Department about the manufacture of different grades of Naphtha. They have also not intimated the Department as to how the various grades of naphtha have a bearing on the marketability of such products. Even now, they have not furnished any information about the material characteristics of the so-called different varieties. They have failed to furnish the technical data and the composition of the naphtha used captively vis-a-vis the supplies made out side but merely making a bald assertion that the products are different. I am at a loss to understand as to why the naphtha used captively cannot be regarded as commercial grade. Only because the assesse did not choose to sell the naphtha but used the same for production of electricity does not necessarily mean it is a non-commercial grade. The naphtha in question is being

WWW.TAXSCAN.IN

used as fuel in the gas turbine to produce electricity. The product is capable of being used in any gas turbine to produce electricity. Such being the case there cannot be any lot of doubt about the marketability of the product. After all, the naphtha is fired to generate hot flue gas, which are subsequently compressed and used for rotating the turbo generator. The assessee has two plants in the refinery premises and they manufacture naphtha in both the plants and naphtha is being supplied from both the plants for power generation. It could be seen from the statement dated 20/11/2000 of Shri K. Venkatesan, Senior Manager [process eng.] that depending on the crude oil quality there may be minor variation in the naphtha manufactured. It was further stated that they do not have any dedicated refinery at Manali to supply naphtha to fertilizer units. They also add certain chemicals and some of the chemicals are common for both the refineries and where as depending on the crude processed, some chemicals may vary. The averments made goes to show that they may be certain variation in the naphtha manufactured, depending upon the crude processed. Otherwise they do not consciously manufacture different grades of naphtha such as commercial and non-commercial grade. In any event there is nothing on record to even remotely suggest that the impugned product is not marketable. The impugned product is drawn only from the naphtha plant and it is capable of being used to produce hot flue gas and consequently it is marketable......."

After going through the detailed reasoning of the original authority, we find ourselves in agreement with the same. Hence we disregard the plea of non-marketability of Naphtha raised by the appellant.

7. In view of the above discussions, we conclude that the duty demand raised in the impugned order by denying the benefit of Notification No.67/95 ibid is sustained along with the order of payment of interest. However, in the facts and circumstances of the present case, we are of the view that there is no justification for imposition of penalty on the appellant. Accordingly, penalty is set aside.

In the result, appeal partly is allowed in the above terms.

(order pronounced in court on 23.06.2017)

| | |
|---|---|
| (V.Padmanabhan) | (Sulekha Beevi C.S) |
| Member (Technical) | Member (Judicial) |