CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Miscellaneous Application No. 85359 of 2024
(on behalf of Respondent)

in

Excise Appeal No. 87649 of 2016

(Arising out of Order-in-Appeal No. PK/20 & 21/M-II/2016 dated 29.08.2016 passed by Commissioner of Central Excise (Appeals), Mumbai-II, Mumbai.)

Bharat Petroleum Corporation Limited **.....Appellants**
Mumbai Refinery, Mahul
Mumbai – 400 074.

VERSUS

Commissioner of CGST & Central Excise **.....Respondent**
Navi Mumbai Commissionerate
16th Floor, Satra Plaza,
Sector 19D, Palm Beach Road
Vashi, Navi Mumbai - 400 705.

WITH

Miscellaneous Application No. 86585 of 2025
(on behalf of Appellants)

in

Excise Appeal No. 87649 of 2016

(Arising out of Order-in-Appeal No. PK/20 & 21/M-II/2016 dated 29.08.2016 passed by Commissioner of Central Excise (Appeals), Mumbai-II, Mumbai.)

Bharat Petroleum Corporation Limited **.....Appellants**
Mumbai Refinery, Mahul
Mumbai – 400 074.

VERSUS

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Navi Mumbai Commissionerate
16th Floor, Satra Plaza,
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WITH

EXCISE APPEAL No. 87649 of 2016

(Arising out of Order-in-Appeal No. PK/20 & 21/M-II/2016 dated 29.08.2016 passed by Commissioner of Central Excise (Appeals), Mumbai-II, Mumbai.)

Bharat Petroleum Corporation Limited **.....Appellants**
Mumbai Refinery, Mahul
Mumbai – 400 074.

VERSUS

Commissioner of CGST & Central Excise **.....Respondent**
Navi Mumbai Commissionerate
16th Floor, Satra Plaza,
Sector 19D, Palm Beach Road
Vashi, Navi Mumbai - 400 705.

AND

Miscellaneous Application No. 85358 of 2024
(on behalf of Respondent)

in

Excise Appeal No. 87650 of 2016

(Arising out of Order-in-Appeal No. PK/20 & 21/M-II/2016 dated 29.08.2016 passed by Commissioner of Central Excise (Appeals), Mumbai-II, Mumbai.)

Bharat Petroleum Corporation Limited **.....Appellants**
Mumbai Refinery, Mahul
Mumbai – 400 074.

VERSUS

Commissioner of CGST & Central Excise **.....Respondent**
Navi Mumbai Commissionerate
16th Floor, Satra Plaza,
Sector 19D, Palm Beach Road
Vashi, Navi Mumbai - 400 705.

WITH

Miscellaneous Application No. 86584 of 2025
(on behalf of Appellants)

in

Excise Appeal No. 87650 of 2016

(Arising out of Order-in-Appeal No. PK/20 & 21/M-II/2016 dated 29.08.2016 passed by Commissioner of Central Excise (Appeals), Mumbai-II, Mumbai.)

Bharat Petroleum Corporation Limited **.....Appellants**
Mumbai Refinery, Mahul
Mumbai – 400 074.

VERSUS

Commissioner of CGST & Central Excise **.....Respondent**
Navi Mumbai Commissionerate
16th Floor, Satra Plaza,
Sector 19D, Palm Beach Road
Vashi, Navi Mumbai - 400 705.

WITH

EXCISE APPEAL No. 87650 of 2016

(Arising out of Order-in-Appeal No. PK/20 & 21/M-II/2016 dated 29.08.2016 passed by Commissioner of Central Excise (Appeals), Mumbai-II, Mumbai.)

Bharat Petroleum Corporation Limited **.....Appellants**
Mumbai Refinery, Mahul
Mumbai – 400 074.

VERSUS

Commissioner of CGST & Central Excise **.....Respondent**
Navi Mumbai Commissionerate
16th Floor, Satra Plaza,
Sector 19D, Palm Beach Road
Vashi, Navi Mumbai - 400 705.

APPEARANCE**:**

Shri Gopal Mundra a/w Ms. Priyanka Shekhawat, Advocates for the Appellants
Shri Xavier Mascarenhas, Authorized Representative for the Respondents

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86735-86736/2025

DATE OF HEARING: 01.08.2025
DATE OF DECISION: 30.10.2025

PER : M.M. PARTHIBAN

These appeals have been filed by M/s Bharat Petroleum Corporation Limited (BPCL), Mumbai Refinery, Mahul, Mumbai (herein after, referred to as 'the appellants'), assailing Order-in-Appeal No. PK/20&21/M-II/2016 dated 29.08.2016 (herein after, referred to as 'the impugned order') passed by Commissioner of Central Excise (Appeals), Mumbai-II, Mumbai.

2.1 The miscellaneous applications being No. E/Misc./85358/2024 and No. E/Misc./85359/2024 have been filed by the Revenue seeking change in the name and address of the respondent to "*Commissioner of Central Goods Service Tax & Central Excise, Navi Mumbai*" having the office of the Commissionerate at the address "*16th Floor, Satra Plaza, Sector-19D, Palm Beach Road, Vashi, Navi Mumbai-400 705*", due to change in the territorial jurisdiction after introduction of GST regime vide Notification No.13/2017-C.E. (N.T) dated 09.06.2017 and as the appellants-assessee falls in their jurisdiction. As the revised name and address of the respondent correctly reflect the revised jurisdictional departmental authorities under whose jurisdiction the appellants-assessee is functioning for the purpose of Central Excise, the miscellaneous applications are allowed and the revised name and address of the respondent is duly incorporated in the cause title. Registry is directed to carry out the necessary changes for record purpose.

2.2 Further miscellaneous applications being No. E/Misc./86584/2025 and No. E/Misc./86585/2025 have been filed by the appellants seeking for early hearing of the appeals, by placing reliance on the judgements delivered by the Hon'ble Supreme Court in the case of *Union of India Vs. G.S. Chatha Rice Mills* – 2020 (374) E.L.T. 289 (S.C.) and in the case of *Union of India Vs. Param Industries Limited* – 2015 (321) E.L.T. 192 (S.C.) on the disputed issue of effective date of notification issued by the Central Government. On going through the averments made in the miscellaneous applications, we are of the view that the prayer made by the applicant-appellants can be considered in the interest of justice. Therefore, the early hearing applications are allowed and with the consent of both the parties, the appeals are being taken up for consideration and for final disposal herein.

3.1 Briefly stated, the facts of the case are that the appellants herein is, *inter alia*, engaged in the manufacture and sale of petroleum products classifiable under Chapter 27 of the Central Excise Tariff Act, 1985. The final products are obtained from their petroleum refinery located at Mahul, Mumbai, wherein the activity of refining of various crude petroleum products are carried out resulting in manufacture of High-Speed Diesel (HSD) and Motor Spirit (MS). For this purpose they are duly registered with jurisdictional Central Excise department with Registration No. AAACB2902MXM036. The petroleum products are removed by the appellants from their refinery through pipelines to its own locations under stock transfer and to other Oil Marketing Companies (OMCs). On clearance of the petroleum products, the appellants discharge the applicable Central Excise Duty on MS and HSD in terms of Notification No. 12/2012-C.E. dated 17.03.2012 as amended from time to time.

3.2 On 12.11.2014, during 10.49 Hrs. to 15.47 Hrs., the appellants had cleared the petroleum products viz., MS and HSD on payment of Central Excise duty in accordance with the duty rates notified by Notification No.

12/2012-C.E. dated 17.03.2012 amended by Notification No. 12/2014-C.E. dated 11.07.2014. The Ministry of Finance had issued a Notification No. 22/2014-C.E. dated 12.11.2014 in further enhancement of the rates of Excise duty on MS and HSD. Such notification was available to the Oil Industry very late in the evening of 12.11.2014, much later after the clearance of MS and HSD during the day. Owing to the reason that the effective date of the said notification was not specifically mentioned therein, the appellants did not discharge the revised rate of Excise duty on the clearances made during 12.11.2014. However, the Appellants had started paying at the enhanced rates for the subsequent clearances on 13.11.2014 onwards.

3.3 In this regard, the Department by letter dated 01.12.2014 had directed the appellants to pay the differential Excise duty in respect of clearances of products made on 12.11.2014, on the understanding that the Notification No. 22/2014-C.E. dated 12.11.2014 is effective from 12.11.2014. Accordingly, the appellants had discharged the differential Excise duty of Rs.4,23,65,280/- under protest, vide payment made through Challan No.00070 dated 06.12.2014, in respect of petroleum products removed from their refinery under the cover of Excise invoices No. 6000065325 at 15.39 Hrs., No. 6000065328 at 15.47 Hrs., No. 6000065571 at 10.49 Hrs., and No. 600006687 at 13.57 Hrs., all dated 12.11.2014. Further, the appellants had also informed the jurisdictional Superintendent of Central Excise by their letter dated 08.12.2014, that in their understanding the enhanced rate of excise duty was applicable from 13.11.2014 and to this effect they have made a representation to the Ministry of Petroleum & Natural Gas. Therefore, the appellants are paying the differential duty under protest and intend to seek refund of such excess duty payment.

3.4 After payment of such duty, the appellants had filed a refund claim on 29.10.2015 before the Assistant Commissioner of Central Excise, Chembur-I Division, Mumbai-II for an amount of Rs.4,23,65,280/- paid by them under protest. The department had issued Show Cause Notice (SCN) dated 20.01.2016 claiming that the notification No. 22/2014-C.E. dated 12.11.2014 was issued in terms of the provisions of Section 5A(5) of the Central Excise Act, 1944 which specify that it shall come into force on the date of its issue by the Central Government for publication in the Official Gazette. Thus, the enhanced rate of excess duty was applicable with effect from 12.11.2014, and the refund claim filed by the appellants is not admissible in terms of Section 11B of the Central Excise Act, 1944. The said SCN dated 20.01.2016 was adjudicated by the jurisdictional Assistant Commissioner of Central Excise, Chembur-I Division, Mumbai-II, vide Order-in-Original dated 08.03.2026 in rejecting the refund claim filed by the appellants was the differential duty paid in respect of clearances of MS & HSD effected on 12.11.2014.

3.5 Similarly, On 02.12.2014, during 10.12 Hrs. to 16.23 Hrs., the appellants had cleared the petroleum products viz., MS and HSD on payment of Central Excise duty in accordance with the duty rates notified by Notification No. 12/2012-C.E. dated 17.03.2012 as amended by Notification No. 22/2014-C.E. dated 12.11.2014. The Ministry of Finance had issued one another Notification No. 24/2014-C.E. dated 02.12.2014 in furthermore enhancement of the rates of Excise duty on MS and HSD. Such notification was also made available to the Oil Industry very late in the evening of 02.12.2014, much later after the clearance of MS and HSD during the day. Owing to the reason that the effective date of the said notification was not specifically mentioned therein, the appellants did not discharge the revised rate of Excise duty on the clearances made during 02.12.2014. However, the appellants had started paying at the enhanced rates for the subsequent clearances on 03.12.2014 onwards.

3.6 The department by letter dated 30.12.2014 had directed the appellants to pay the differential Excise duty in respect of clearances of products made on 02.12.2014, on the understanding that the Notification No. 24/2014-C.E. dated 02.12.2014 is effective from 02.12.2014. Accordingly, the appellants had discharged the differential Excise duty of Rs.2,38,83,272/- under protest, vide payment made through Challan No.00094 dated 06.01.2015, in respect of petroleum products removed from their refinery under the cover of Excise invoices No. 6000072644 at 10.37 Hrs., No. 6000072416 at 16.17 Hrs., No. 6000072422 at 16.23 Hrs., and No. 6000073980 at 10.12 Hrs., all dated 02.12.2014. The appellants had discharged the differential Excise duty of Rs.2,38,83,272/- under protest, vide payment made through Challan No. 00094 dated 06.01.2015. Further, the appellants had also informed the jurisdictional Superintendent of Central Excise by their letter dated 07.01.2015, that in their understanding the enhanced rate of excise duty was applicable from 03.12.2014 and to this effect they have made a representation to the

Ministry of Petroleum & Natural Gas. Therefore, the appellants are paying the differential duty under protest and intend to seek refund of such excess duty payment.

3.7 After payment of differential duty, the appellants had also filed one another refund claim on 30.10.2015 before the Assistant Commissioner of Central Excise, Chembur-I Division, Mumbai-II for an amount of Rs.2,38,83,272/- paid by them under protest. The department had issued Show Cause Notice (SCN) dated 21.01.2016 claiming that the notification No. 24/2014-C.E. dated 02.12.2014 was issued in terms of the provisions of Section 5A(5) of the Central Excise Act, 1944 which specify that it shall come into force on the date of its issue by the Central Government for publication in the Official Gazette. Thus, the enhanced rate of excess duty was applicable with effect from 02.12.2014, and the refund claim filed by the appellants is not admissible in terms of Section 11B of the Central Excise Act, 1944. The said SCN dated 21.01.2016 was adjudicated by the jurisdictional Assistant Commissioner of Central Excise, Chembur-I Division, Mumbai-II, vide Order-in-Original dated 07.03.2026 in rejecting the refund claim filed by the appellants was the differential duty paid in respect of clearances of MS & HSD effected on 02.12.2014.

3.8 Being aggrieved with the aforesaid orders of the original authority, the appellants have filed appeals before the Commissioner of Central Excise (Appeals), Mumbai–II, who vide Order-in-Appeal dated 29.08.2016 had upheld the orders of the original authority in respect of rejection of refund claims, and rejected the appeals filed by the appellants. Feeling aggrieved with the impugned order, the appellants have filed these appeals before the Tribunal.

4. We have heard both sides and perused the case records and additional paper books submitted in this case by both sides.

5.1 The issue involved herein is to decide,-

(i) whether, the appellants are liable to pay excise duty at the enhanced rates mentioned in Notification No. 22/2014-C.E. dated 12.11.2014 and Notification No. 24/2014-C.E. dated 02.12.2014 in respect of clearances of petroleum products made on 12.11.2014 and 02.12.2014, respectively, in terms of Section 5A of the Central Excise Act, 1944; and

(ii) whether the refund claims filed by appellants in respect of differential duty paid under protest in respect of clearances of petroleum products made on 12.11.2014 and 02.12.2014 is admissible or not, and whether the impugned orders upholding the orders of original authority in rejecting the refund claims of appellants are sustainable in terms of Section 11B of the Central Excise Act, 1944 or otherwise?

5.2 In order to address the above issue of date of effect of the notification issued in enhancing the rate of excise duty under Section 5A of the Central Excise Act, 1944 and the claim of refund of differential duty paid under protest, we would like to refer the relevant legal provisions contained in Sections 5A and 11B of the Central Excise Act, 1944 during the relevant time of dispute. The relevant provisions are extracted and given as follows:

CENTRAL EXCISE ACT, 1944

"Section 5A. Power to grant exemption from duty of excise.
(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after removal) as may be specified in the notification, excisable goods of any specified description from the whole or any part of the duty of excise leviable thereon :…….

(2A) The Central Government may, if it considers it necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification in the Official Gazette at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be…..

[1]*(5) Every notification issued under sub-section (1) or sub-section (2A) shall, unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette.*

Prior to its substitution, sub-section (5), as amended by the Finance Act, 2002, w.e.f. 11-5-2002, read as under :

[2]*"(5) Every notification issued under sub-section (1) or sub-section (2A) shall,—*
(a) unless otherwise provided, come into force on the date of its issue by the Central Government for publication in the Official Gazette;
(b) also be published and offered for sale on the date of its issue by the Directorate of Publicity and Public Relations, Customs and Central Excise, New Delhi, under the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)."

Omitted by the Finance Act, 2016, w.e.f. 14-5-2016. Prior to its omission, sub-section (6), read as under :
"(6) Notwithstanding anything contained in sub-section (5), where a notification comes into force on a date later than the date of its issue, the same shall be published and offered for sale by the said Directorate of

[1] Substituted by the Finance Act, 2016, w.e.f. 14-5-2016.
[2] Sub-sections (5) and (6) inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-8-1998.

Publicity and Public Relations on a date on or before the date on which the said notification comes into force."

Claim for refund of duty and interest, if any, paid on such duty.
11B. *(1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person :*

Provided *that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) as substituted by that Act :*

Provided further *that the limitation of one year shall not apply where any duty and interest, if any, paid on such duty has been paid under protest.*

(2) If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund:

Provided *that the amount of duty of excise and interest, if any, paid on such duty as determined by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—*
(a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;
(b) unspent advance deposits lying in balance in the applicant's account current maintained with the Principal Commissioner of Central Excise or Commissioner of Central Excise
(c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act
(d) the duty of excise and interest, if any, paid on such duty paid by the manufacturer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person
(e) the duty of excise and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person
(f) the duty of excise and interest, if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify
Provided further *that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty and interest, if any, paid on such duty has not been passed on by the persons concerned to any other person…..*

6. From plain reading of the above legal provisions, it transpires that sub-section (5) of Section 5A ibid, as it stood during the disputed period, provide for the manner in which every notification issued in terms of sub-section (1) therein shall be published for brining into force the changes made or the matters notified by such notification. The two conditions prescribed in the said sub-section are as follows:

(i) publishing of the notification in the Official Gazette; and

(ii) additional requirement of publishing of the notification and offering it for sale on the date of its issue by the Directorate of Publicity and Public Relations, Customs and Central Excise, New Delhi functioning under the Central Board of Excise and Customs (CBEC).

It also transpires that both the above conditions have to be fulfilled in order to bring into effect the notification issued under Section 5A ibid. Further, the use of the words "*unless otherwise provided*" also provides for bringing into effect of the notification on a future date, than the date of its issue for publication, by specifically providing for the same in the said notification.

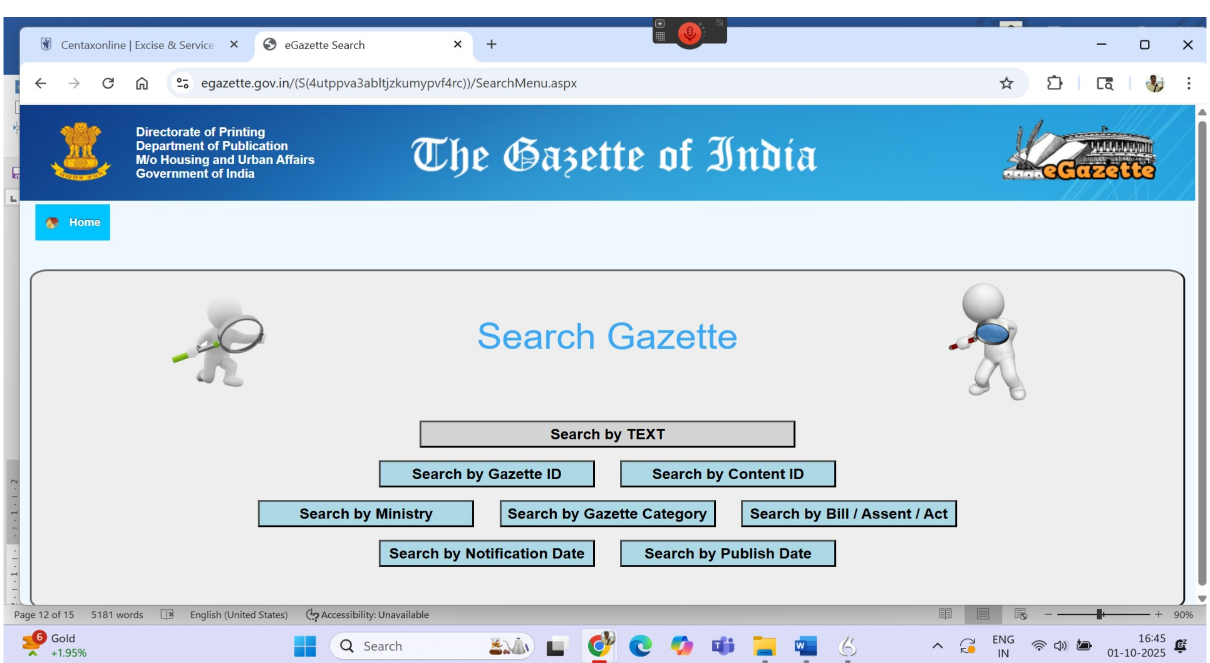
7.1 From the details available in the official website of the Directorate of Printing, Department of Publication in the Ministry of Housing and Urban Affairs of the Government of India, the various notifications issued by the Ministry/Organisation under various subjects on a particular day i.e., 'the date of the notification' are published in the official document i.e., 'The Gazette of India' on a 'publish date' and is offered for sale to the public. The Department of Publication is a service department for issuing the Government of India printed publications, published in the form of the gazettes, Acts, reports and books etc. which have their own utility, importance and referral value. The contents of the material generated & published by the government departments after in-depth studies, deliberations and putting untiring efforts for making them more authentic, valuable and useful for various stakeholders including scholars, academicians, politicians, scientists, technologists, businessmen etc. The object of display and sale of government publications is to disseminate government publications on various national programs and policies etc. to enable the common man to get benefit from such publications. The Department of Publication has its headquarters at Civil Lines, Delhi and sale depots/outlets at various locations such as,

(i) Sale Counter, Delhi High Court, New Delhi. (ii) Sale Counter at Head Quarter Civil Lines, Delhi (iii) Kitab Mahal, Baba Kharag Singh Marg, New Delhi. (iv) Government of India Book Depot, 8, K.S. Roy Road, Kolkata.

(v) Sale Counter at New CGO Complex, New Marine Lines, Mumbai.
(vi) Sale Counter, Kendriya Sadan, Koramangala, Bangaluru.

Subsequently, as per the provisions of Section 8 of Information Technology Act, 2000 and in consultation with Department of Legal Affairs, Ministry of Law & Justice, physical printing of Gazette Notifications had been dispensed with and exclusive e-publishing of the same has been started w.e.f. 01.10.2015. The various notifications issued in the Gazette of India during the period 1922 onwards have been digitized and such digitized contents have been provided in the official website for the benefit of scholars and general public.

7.2 In the present case, the relevant notifications involving the present dispute are Notification No. 22/2014-C.E. dated 12.11.2014 and Notification No. 24/2014-C.E. dated 02.12.2014, issued by the Tax Research Unit (TRU), CBEC, Department of Revenue, Ministry of Finance and published as Extra Ordinary notification in Part-II of Section 3 sub-section (i) bearing GSR No.795(E) and GSR No.862(E). The facts displayed in the official website of the Department of Publication indicate that Notification No.22/2014-C.E. dated 12.11.2014 was published in the Gazette of India on 22.11.2014 and Notification No.24/2014-C.E. dated 02.12.2014 was published in the Gazette of India on 11.12.2014. Therefore, it could be concluded that the notifications have been issued by the Ministry of Finance on 12.11.2014 and 02.12.2014 even though these were published in the official Gazette subsequent to the issue date i.e., on 22.11.2014 and 11.12.2014, respectively. These are evident from the extract of the notifications and its issue, publication details provided in the official website of the Department of Publication as given below:



रजिस्ट्री सं० डी० एल०-33004/99 REGD. NO. D. L.-33004/99

भारत का राजपत्र
The Gazette of India

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वित्त मंत्रालय

(राजस्व विभाग)

अधिसूचना

नई दिल्ली, तारीख 12 नवम्बर, 2014

सं. 22/2014-केन्द्रीय उत्पाद शुल्क

सा.का.नि. 795(अ).—केन्द्रीय सरकार, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 (1944 का 1) की धारा 5क की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह समाधान हो जाने पर कि लोकहित में ऐसा करना आवश्यक है, भारत सरकार के वित्त मंत्रालय (राजस्व विभाग) की अधिसूचना सं. 12/2012- केन्द्रीय उत्पाद शुल्क, तारीख 17 मार्च, 2012 में, जो भारत के राजपत्र, असाधारण, भाग II, खंड-3, उप-खंड (i) में सा.का.नि. 163(अ) तारीख 17 मार्च, 2012 द्वारा प्रकाशित की गई थी, निम्नलिखित और संशोधन करती है, अर्थात्-

उक्त अधिसूचना में, सारणी में,-

(i) क्रम संख्या 70 में,-

(क) स्तंभ (3) की मद (i) के सामने स्तंभ (4) में की प्रविष्टि के स्थान पर, "2.70 रुपये प्रति लिटर " प्रविष्टि प्रतिस्थापित की जायेंगी;

(ख) स्तंभ (3) की मद (ii) के सामने स्तंभ (4) में की प्रविष्टि के स्थान पर, "3.85 रुपये प्रति लिटर" प्रविष्टि प्रतिस्थापित की जायेंगी;

(ii) क्रम संख्या 71 में,-

(क) स्तंभ (3) की मद (i) के सामने स्तंभ (4) में की प्रविष्टि के स्थान पर, "2.96 रुपये प्रति लिटर" प्रविष्टि प्रतिस्थापित की जायेंगी;

(ख) स्तंभ (3) की मद (ii) के सामने स्तंभ (4) में की प्रविष्टि के स्थान पर, "5.25 रुपये प्रति लिटर" प्रविष्टि प्रतिस्थापित की जायेंगी;

[फा. सं. 354/123/2014-टीआरयु]

अक्षय जोशी, अवर सचिव

टिप्पण : मूल अधिसूचना सं0 12/2012-केन्द्रीय उत्पाद शुल्क, तारीख 17 मार्च, 2012, सा.का.नि. 163(अ), तारीख 17 मार्च, 2012 भारत के राजपत्र, असाधारण, भाग-II, खंड -3, उपखंड (i) में, प्रकाशित की गई थी और सा.का.नि. 792(अ), तारीख 11 नवम्बर, 2014 उसमें अंतिम संशोधन अधिसूचना सं. 21/2014-केन्द्रीय उत्पाद शुल्क, तारीख 11 नवम्बर, 2014 के द्वारा किया गया था।

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, the 12th November, 2014

No. 22/2014-Central Excise

G.S.R. 795(E).—In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012-Central Excise, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* G.S.R. 163(E), dated the 17th March, 2012, namely :—

In the said notification, in the Table,-

(i) in serial number 70,-

(a) against item (i) of column (3), for the entry in column (4), the entry "₹ 2.70 per litre" shall be substituted;

(b) against item (ii) of column (3), for the entry in column (4), the entry "₹ 3.85 per litre" shall be substituted;

(ii) in serial number 71,

(a) against item (i) of column (3), for the entry in column (4), the entry "₹ 2.96 per litre" shall be substituted;

(b) against item (ii) of column (3), for the entry in column (4), the entry "₹ 5.25 per litre" shall be substituted;

[F. No. 354/123/2014--TRU]

AKSHAY JOSHI, Under Secy.

Note : The principal notification No. 12/2012-Central Excise, dated the 17th March, 2012 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 163(E) dated the 17th March, 2012 and was last amended *vide* notification No. 21/2014-Central Excise, dated the 11th November, 2014 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 792 (E) dated the 11th November, 2014.

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Details in respect of Gazette Notifications issued on 12.11.2014 by the Central Government, which were published in the Gazette of India

Directorate of Printing
Department of Publication
M/o Housing and Urban Affairs
Government of India

The Gazette of India

Search Gazette by Notification Date

Date of Issue of Notification - From : 12-Nov-2014 To : 12-Nov-2014

Total No. of Gazettes : 10

S. No.	Ministry / Organization	Department	Office	Subject	Category	Part & Section	Issue Date	Publish Date	Gazette ID	Download
1.	Ministry of Civil Aviation	NOT available	NOT available	Draft Rules. These rules may be called the Aircraft (Amendment) Rules, 2014.	Extra Ordinary	Part II-Section 3-Sub-Section (i)	12-Nov-2014	26-Nov-2014	NOT available (161752)	0.08 MB
2.	Pharmacy Council of India	NOT available	NOT available	These regulations may be called the Minimum Qualification for Teachers in Pharmacy Institutions Regulations, 2014.	Extra Ordinary	Part III-Section 4	12-Nov-2014	08-Dec-2014	NOT available (161732)	0.13 MB
3.	Ministry of Road Transport and Highways	NOT available	NOT available	Land acquisition on National Highway No. 70 from km 0.000 to km 59.00 in the State of Punjab.	Extra Ordinary	Part II-Section 3-Sub-Section (ii)	12-Nov-2014	26-Nov-2014	NOT available (161730)	0.09 MB
4.	Ministry of Corporate Affairs	The Institute of Cost Accountants of India	NOT available	The Central Govt. hereby makes the following regulations further to amend the Cost and Works Accountants Regulations, 1959, These regulations may be called the Cost and Works Accountants (Amendment) Regulations	Extra Ordinary	Part III-Section 4	12-Nov-2014	23-Nov-2014	NOT available (161724)	0.09 MB

S. No.	Ministry / Organization	Department	Office	Subject	Category	Part & Section	Issue Date	Publish Date	Gazette ID	Download
5.	Ministry of Finance	Department of Revenue	Central Board of Direct Taxes	makes the following amendments to the following notifications of the Govt. of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes.	Extra Ordinary	Part II-Section 3-Sub-Section (ii)	12-Nov-2014	21-Nov-2014	NOT available (161693)	0.17 MB
6.	Ministry of Finance	Department of Financial Services	NOT available	The Central Govt. hereby appoints Dr. Hasmukh Adhia, Secretary, Department of Financial Services as Member of the said Corporation vice Shri Gurdial Singh Sandhu, with immediate effect till further orders.	Extra Ordinary	Part II-Section 3-Sub-Section (ii)	12-Nov-2014	21-Nov-2014	NOT available (161692)	0.1 MB
7.	Vice President Secretariat	NOT available	NOT available	These rules may be called the Vice-President Secretariat (Recruitment and Conditions of Service) Amendment Rules, 2014.	Extra Ordinary	Part II-Section 3-Sub-Section (i)	12-Nov-2014	22-Nov-2014	NOT available (161691)	0.15 MB
8.	Ministry of Railways	Railway Board	NOT available	Land to be Acquire with or without structure falling within the District Mehsana for Special Railway Project, namely, Western Dedicated Freight Corridor in the State of Gujarat.	Extra Ordinary	Part II-Section 3-Sub-Section (ii)	12-Nov-2014	21-Nov-2014	NOT available (161690)	0.08 MB
9.	Ministry of Finance	Department of Revenue	NOT available	The Central Govt, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Govt. of India in the Ministry of Finance (Department of Revenue), No. 12-2012-Central Excise, dated the 17th March, 2012.	Extra Ordinary	Part II-Section 3-Sub-Section (i)	12-Nov-2014	22-Nov-2014	NOT available (161661)	0.08 MB
10.	Ministry of Road Transport and Highways	NOT available	NOT available	Land to be acquired with or without structure falling within the stretch of land from Km. 615.000 to Km. 668.600 (Maharashtra Telangana border to Nirmal section) of the NH No 222 in the State of Telangana.	Extra Ordinary	Part II-Section 3-Sub-Section (ii)	12-Nov-2014	21-Nov-2014	NOT available (161660)	0.09 MB

रजिस्ट्री सं० डी० एल०-33004/99 REGD. NO. D. L.-33004/99

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
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PART II—Section 3—Sub-section (i)
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(राजस्व विभाग)

अधिसूचना

नई दिल्ली, 2 दिसम्बर, 2014

सं. 24/2014-केन्द्रीय उत्पाद शुल्क

सा.का.नि. 862(अ).— केन्द्रीय सरकार, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 (1944 का 1) की धारा 5क की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह समाधान हो जाने पर कि लोकहित में ऐसा करना आवश्यक है, भारत सरकार के वित्त मंत्रालय (राजस्व विभाग) की अधिसूचना सं. 12/2012- केन्द्रीय उत्पाद शुल्क, तारीख 17 मार्च, 2012 में, जो भारत के राजपत्र, असाधारण, भाग II, खंड-3, उपखंड (i) में सा.का.नि. 163 (अ) तारीख 17 मार्च, 2012 द्वारा प्रकाशित की गई थी, निम्नलिखित और संशोधन करती है, अर्थात्-

उक्त अधिसूचना में, सारणी में,-

(i) क्रम संख्या 70 में,-

(क) स्तंभ (3) की मद (i) के सामने स्तंभ (4) में की प्रविष्टि के स्थान पर,"4.95 रुपये प्रति लिटर " प्रविष्टि प्रतिस्थापित की जायेगी;

(ख) स्तंभ (3) की मद (ii) के सामने स्तंभ (4) में की प्रविष्टि के स्थान पर,"6.10 रुपये प्रति लिटर " प्रविष्टि प्रतिस्थापित की जायेंगी;

(ii) क्रम संख्या 71 में,-

(क) स्तंभ (3) की मद (i) के सामने स्तंभ (4) में की प्रविष्टि के स्थान पर,"3.96 रुपये प्रति लिटर " प्रविष्टि प्रतिस्थापित की जायेंगी;

(ख) स्तंभ (3) की मद (ii) के सामने स्तंभ (4) में की प्रविष्टि के स्थान पर,"6.25 रुपये प्रति लिटर " प्रविष्टि प्रतिस्थापित की जायेंगी;

[फा.सं. 354/123/2014-टीआरयू]

अक्षय जोशी, अवर सचिव

टिप्पण: मूल अधिसूचना सं. 12/2012-केन्द्रीय उत्पाद शुल्क, तारीख 17 मार्च, 2012, सा.का.नि. 163(अ), तारीख 17 मार्च, 2012 भारत के राजपत्र, असाधारण, भाग–II, खंड -3, उपखंड (i) में, प्रकाशित की गई थी और सा.का.नि. 795(अ), तारीख 12 नवम्बर, 2014 उसमें अंतिम संशोधन अधिसूचना सं. 22/2014- केन्द्रीय उत्पाद शुल्क, तारीख 12 नवम्बर ,2014 के द्वारा किया गया था।

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, the 2nd December, 2014

No. 24/2014-Central Excise

G.S.R. 862 (E).— In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.12/2012-Central Excise, dated the 17th March, 2012, published in the Gazette of India, Extraordinary,
Part II, Section 3, Sub-section (i) *vide* G.S.R. 163(E), dated the 17th March, 2012, namely: —

In the said notification, in the Table,—

(i) in serial number 70,-

(a) against item (i) of column (3), for the entry in column (4), the entry "₹ 4.95 per litre" shall be substituted;

(b) against item (ii) of column (3), for the entry in column (4), the entry "₹ 6.10 per litre" shall be substituted;

(ii) in serial number 71,-

(a) against item (i) of column (3), for the entry in column (4), the entry "₹ 3.96 per litre" shall be substituted;

(b) against item (ii) of column (3), for the entry in column (4), the entry "₹ 6.25 per litre" shall be substituted;

[F. No. 354/123/2014--TRU]

AKSHAY JOSHI, Under Secy.

Note.- The principal notification No. 12/2012-Central Excise, dated the 17th March, 2012 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 163(E) dated the 17th March, 2012 and was last amended *vide* notification No. 22/2014-Central Excise, dated the 12th November, 2014 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 795(E)dated the 12th November, 2014.

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Details in respect of Gazette Notifications issued on 02.12.2014 by the Central Government, which were published in the Gazette of India

Directorate of Printing
Department of Publication
M/o Housing and Urban Affairs
Government of India

The Gazette of India

Search Gazette by Notification Date

Date of Issue of Notification - *From* : 02-Dec-2014 *To* : 02-Dec-2014 Submit

Total No. of Gazettes : 11

S. No.	Ministry / Organization	Department	Office	Subject	Category	Part & Section	Issue Date	Publish Date	Gazette ID	Download
1.	Ministry of Agriculture and Farmers Welfare	Department of Agriculture and Cooperation	NOT available	These rules may be called the Ministry of Agriculture, Department of Agriculture and Cooperation, Supari Aur Masala Vikas Nideshalaya (Directorate of Arecanut and Spices Development), Group C posts Recruitment Rules, 2014.	Extra Ordinary	Part II-Section 3-Sub-Section (i)	02-Dec-2014	29-Jan-2015	NOT available (162491)	0.26 MB
2.	Ministry of Coal	NOT available	NOT available	The Central Govt. hereby gives notice of its intention to prospect for coal in the land described in the said Schedule.	Extra Ordinary	Part II-Section 3-Sub-Section (ii)	02-Dec-2014	27-Dec-2014	NOT available (162143)	0.53 MB
3.	Ministry of Home Affairs	NOT available	NOT available	These rules may be called the Indo-Tibetan Border Police Force, Veterinary Cadre (Group B and Group C Posts) Recruitment Rules, 2014.	Extra Ordinary	Part II-Section 3-Sub-Section (i)	02-Dec-2014	27-Dec-2014	NOT available (162113)	0.27 MB
4.	Lok Sabha Secretariat	NOT available	NOT available	Bill was introduced in Lok Sabha on 2nd December, 2014, The School of Planning	Extra	Part II-Section 2	02-Dec-2014	17-Dec-2014	NOT available	0.16 MB
7.	Ministry of Health and Family Welfare	Food Safety and Standards Authority	NOT available	The Food Safety and Standards Authority of India hereby notifies the following laboratories based on the National Accreditation Board for Testing and Calibration Laboratories for the purposes of carrying out the analysis of food sample taken under section 47 of the Food Safety and Standard Act, 2006, with effect from the date of publication of this notification in the official Gazette.	Extra Ordinary	Part II-Section 3-Sub-Section (ii)	02-Dec-2014	12-Dec-2014	NOT available (162018)	0.26 MB
8.	Ministry of Road Transport and Highways	NOT available	NOT available	DRAFT RULES. These rules may be called the Central Motor Vehicles (Amendment) Rules, 2014.	Extra Ordinary	Part II-Section 3-Sub-Section (i)	02-Dec-2014	11-Dec-2014	NOT available (161982)	0.15 MB
9.	Ministry of Finance	Department of Revenue	NOT available	The Central Govt, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Govt. of India in the Ministry of Finance (Department of Revenue), No.12-2012-Central Excise, dated the 17th March, 2012.	Extra Ordinary	Part II-Section 3-Sub-Section (i)	02-Dec-2014	11-Dec-2014	NOT available (161981)	0.13 MB
10.	Ministry of Health and Family Welfare	Food Safety and Standards Authority	NOT available	The Food Safety and Standards Authority of India (herein referred to as the Food Authority) hereby recognises the following laboratories to carryout functions of referral food laboratory for the specified areas and scope mentioned against the each laboratory mentioned in column (3) of Table given below.	Extra Ordinary	Part II-Section 3-Sub-Section (ii)	02-Dec-2014	12-Dec-2014	NOT available (161980)	0.17 MB
11.	Ministry of Finance	Department of Revenue	NOT available	The Central Govt. hereby directs the aforesaid person to appear before Shri Swarup Samanta, Investigating Officer, Narcotics Control Bureau, Kolkata Zonal Unit, 4-2, Karaya Road, 3rd Floor, Kolkata-700017 within 10 days of the publication.	Extra Ordinary	Part II-Section 3-Sub-Section (ii)	02-Dec-2014	12-Dec-2014	NOT available (161967)	0.12 MB

7.3 In terms of the sub-section 5(a) to Section 5A ibid, every notification issued shall come into force on the date of its issue by the Central Government for publication in the Official Gazette, and not on the date of publication of the notification in the official Gazette. Therefore, it could be concluded that Notification No.22/2014-C.E. dated 12.11.2014 and Notification No.24/2014-C.E. dated 02.12.2014, even though it was published in the official gazette later, since these were issued by the Central Government for publication in the official gazette on dates of the notification, on the basis of the first requirement or condition of Section 5A(5)(a) ibid alone these notifications could be construed to have come into force on 12.11.2014 and 02.12.2014 respectively. However, as the requirement of Section 5A is that each of the notification issued shall have to fulfill both the conditions of sub-section 5(a) and 5(b) ibid, we need to see whether the second condition was also fulfilled in order to come to a conclusion on the effective date of the issue of the notifications under consideration. The appellants have also brought the fact on record that the Central Public Information Officer, Department of Publication, New Delhi in response to the RTI application had informed that the Notification No.22/2014-C.E. dated 12.11.2014 was made available to the public on 14.11.2014 at 3.30 PM and similarly the Notification No.24/2014-C.E. dated 02.12.2014 was not made available to the public on 02.12.2014 till the end of the day. Therefore, it clearly transpires that the second condition of publishing and offering it for sale to the public on the date of its issue have not been fulfilled either by the Department of Publication or by the CBEC. Therefore, the legal requirement for the manner of issue of notification, in terms of Section 5A(5) ibid have not been fulfilled in the present case, in order to claim that these notifications have come into force on the date of its issue for publication i.e., on 12.11.2014 and 02.12.2014. Further, we also find that the Central Government in the subsequent notifications issued in respect of change/ enhancement of rate of duty for petroleum products vide Notifications No. 01/2015-C.E. dated 01.01.2015 and No.03/2015-C.E. dated 16.01.2015 have specifically stated that the notification shall come into effect from the next date of its issue i.e., 02.01.2015 and 17.01.2015.

8.1 We find that in an identical set of facts arising in the case of *Param Industries Limited (supra)*, the Hon'ble Supreme Court have delivered their judgement dated 05.05.2015, where they have upheld the order of the Hon'ble High Court of Karnataka and rejected the department's appeal for demand of duty, on account of the notification prescribing the enhanced rate of duty was not published and offered for sale to the public on the date of its issue and therefore it cannot be taken as the effective date for enhanced rate of duty. The relevant paragraphs in the said judgement is extracted and given below:

> *"2. Suffice is to state that in these proceedings, the respondent has ultimately succeeded inasmuch as this plea has been accepted and the Division Bench of the High Court has concluded that notification issued under Section 14(2) of the Customs Act cannot be held to have come into force with effect from 3-8-2001. There was some dispute as to whether the notification was published on 3-8-2011 itself or it was published on a later date. However, from the record, it gets revealed*

that the notification was sent for publication after the normal office hours, i.e., much after 5 p.m. on 3-8-2001. It was almost at the midnight, may be few minutes before 12 in the night. Even if it is to be treated as notification having been published on 3-8-2001 itself, i.e., just before the midnight, an issue has arisen as to whether it could be made effective qua the goods which were already cleared during the day time on the basis of earlier notification. However, it is not necessary to go into this issue at all.

3. What we find is that the High Court has stated that for bringing the notification into force and make it effective, two conditions are mandatory, viz., (1) Notification should be duly published in the official gazette, (2) it should be offered for sale on the date of its issue by the Directorate of Publicity and Public Relations of the Board, New Delhi. In the present case, admittedly, second condition was not satisfied inasmuch as it was offered for sale only on 6-8-2001, as it was published on 3-8-2001 in late evening hours and 4/5-8-2001 were holidays.

4. We are in agreement with the aforesaid view taken by the High Court which is in confirmity with the law laid down by this court in 'Harla v. The State of Rajasthan' [1952 (1) SCR 110] wherein this court formulated the aforesaid principle in the following manner :-

> *"The principle underlying this question has been judicially considered in England. For example, on a somewhat lower plane, it was held in Johnson v. Sargant that an Order of the Food Controller under the Beans, Peas and Pulse (Requisition) Order, 1917 does not become operative until it is made known to the public, and the difference between an Order of that kind and an Act of the British Parliament is stressed. The difference is obvious. Acts of the British Parliament are publicly enacted. The debates are open to the public and the Acts are passed by the accredited representatives of the people who in theory can be trusted to see that their constituents know what has been done. They also receive wide publicity in papers and, now, over the wireless. Not so Royal Proclamations and Orders of a Food Controller and so forth. There must therefore be promulgation and publication in their cases. The mode of publication can vary; what is a good method in our country may not necessarily be the best in another. But reasonable publication of some sort there must be."*

5. These appeals therefore, are liable to fail only on the aforesaid ground and are dismissed accordingly…..

6. Leave granted.

7. On the facts of these appeals as well, we find that though the notification may have been published on the date when the goods were cleared, it was not offered for sale by the concerned Board, which event took place much thereafter. Therefore, it was not justified and lawful on the part of the Department to claim the differential amount of duty on the basis of said notification. These appeals are, accordingly, allowed only on this ground and it is not necessary to go into other issues at all."

8.2 In this regard, we also find that the appellants have produced refund sanction orders issued by the jurisdictional Central Excise authorities in respect of similarly placed refineries of petroleum industry/ OMCs such as M/s Indian Oil Corporation Limited, Bongaigaon Refinery, P.O. Dhaligaon, District Chirang, Assam and M/s Hindustan Petroleum Corporation Limited, Visakhapatnam on the very same issue treating that the notifications have come into force on the next date of its issue. Further, such authorities have also placed reliance on the invoices issued by the oil companies indicating the excise duty at the pre-revised rates and the burden of differential duty paid had not been passed on to their customers and on the basis of judgement given by the Hon'ble High Court of Gujarat in the case of *Commissioner of Central Excise & Customs Vs. Dhariwal Industries Limited* – 2014 (303) E.L.T. 496 (Guj.) which was also affirmed by the Hon'ble Supreme Court in dismissing the appeal filed by the department in Special Leave to Appeal (C) CC No. 16877 of 2014 decided on 03.11.2014 - 2015 (319) E.L.T. A118 (S.C.). We further find that the facts are similar in the present case. In the invoices issued by the appellants on 12.11.2014 and 02.12.2014, in respect of clearances of MS and HSD made by them, they had discharged the appropriate duty of central excise (at the pre-revised rate applicable on the date of its clearance) as the revised rate of excise duty was not made known to the public as provided for under Section 5A ibid. Further, the differential duty was paid by the appellants under protest and the appellants had not passed on the incidence of such additional duty burden to any other person. Therefore, the refund applications filed by the appellants were eligible to be considered by the jurisdictional authorities in terms of the provisions of Section 11B ibid.

8.3 In view of the above judgements delivered by the Hon'ble Supreme Court, we are of the considered view that the dispute is no more open for any debate and the impugned order confirming the rejection of refunds by treating the date of issue of notifications as effective date for applying the enhanced rate of excise duty, does not stand the scrutiny of law.

8.4 On the basis of foregoing discussions and analysis, we are of the considered view that the impugned order dated 29.08.2016 in upholding the rejection of the refund claims of differential excise duty paid under protest by the appellants, is not legally sustainable.

9. In the result, the impugned order dated 29.08.2016 is set aside, and the appeals are allowed in favour of the appellants with consequential benefits as per law.

(Order pronounced in the open court on 30.10.2025)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

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