

2013 (3) ECS (95) (Tri-Ahd)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Zonal Bench, Ahmedabad

M/s. Oil & Natural Gas Corporation Limited

Vs.

Commissioner of Central Excise, Surat

Appeal No. E/423 of 2007

Arising out of OIA No. RS-365-SRT-II dated 24.11.2006

Passed by Commr. (Appeals) C. Excise & Customs, Surat

Appellant (s) M/s. Oil & Natural Gas Corporation Limited

Represented by Shri S. Suriyanarayanan, Advocate

Respondent (s) Commissioner of Central Excise Surat

Represented by Dr. J. Nagori, A.R.

CORAM :

Hon'ble Mr. M.V. Ravindran, Member (Judicial)

Hon'ble Mr. H.K. Thakur, Member (Technical)

Date of Hearing / Decision : 23.07.2013

ORDER No. A/10941/WZB/AHD/2013 dated 23.07.2013

“Argument of the appellant that a favourable decision taken by the Commissioner with reference to their Gandhar unit should be taken as a deemed protest for the appellant's unit is not acceptable as each registered

unit is a separate legal entity so as payment of duty is concerned. Accordingly, it can not be held that duties were paid under protest by the appellant.” [Para 4]

Per ; Mr. H.K. Thakur, Mr.;

1. This appeal has been filed by the appellant against Order-in-Appeal No. RS-366-SRT-II dated 24.11.2006 passed by Commissioner (Appeals); Surat-II. The issue involved is that appellant filed refund claim of duty paid for the period June 2000 to October 2003 on 14.10.2005. The duties were not paid under protest. The refund claim was filed by the appellant on the basis of a favourable order from Commissioner of Central Excise, Vadodara-II in the case of proceedings initiated against their plant situated at CPF, Gandhar on an issue with reference to duty liability, on the quantity of NGL/ Naphtha reprocessed, spiked with crude oil at Gandhar unit.
2. Shri S. Suriyanarayanan, learned Advocate appearing on behalf of the Appellant argued that a favourable order passed by Commissioner with reference to their Gandhar Unit also makes them entitled to refund claim on the same issue as deemed protest with respect to their unit situated in village - Pilodra, Ankleshwar.
3. Shri J. Nagori, learned A.R. appeared on behalf of the Revenue and reiterated the reasoning given by Commissioner (Appeals).
4. We have seriously considered the arguments made by both sides and perused the case records. As per Section 11B(1) of the Central Excise Act, 1944, any person claiming refund of any duty has to make a refund application within one year from the 'relevant date'. Relevant date as per Section 11B (5) (B) (f) means the date on which duty is paid by an assessee. However, second proviso to Section 11B(1) further conveys that the limitation of one year shall not apply when any duty has been paid under protest. In the present case, the period of duty payment is June 2000 to October 2005, which is clearly made after a period of one year from the payment of duty. Argument of the appellant that a favourable decision taken by the Commissioner with reference to their Gandhar unit should be taken as a deemed protest for the appellant's unit is not acceptable as each registered unit is a separate legal entity so as payment of duty is concerned. Accordingly, it can not be held that duties were paid under

protest by the appellant. Commissioner (Appeals) has therefore, correctly rejected the appeal filed by the appellant. Appeal filed by the appellant is therefore, rejected as refund claim has been correctly held as time barred.

(Operative part of the order, pronounced in the Court)