

Appellant Rep by: Shri A Sheeraji, Ms Dimple Gohil & Shri Roshil Nichani, Adv.  
Respondent Rep by: Shri Govind Jha, AR

CORAM: Ramesh Nair, Member (J)  
Raju, Member (T)

Cus - The issue at hand is whether the National Calamity Contingent Duty (NCCD) levied at specific rates is to be levied on actual Shore Tank Receipt Quantity or based on Ullage Report/Bill of Lading Quantity - The Revenue claimed that the NCCD be levied on the quantity as per the bill of lading and not on the actual shore tax receipt quantity - Hence duty demand was raised in respect of the differential quantity between bill of lading quantity and the actual shore tank receipt quantity - Hence the present appeal.

Held: The issue at hand was considered by the Tribunal in Bharat Petroleum Corporation Limited Vs CC. - 2015-TIOL-211-CESTAT-MUM., wherein it was held that the NCCD levied at specific rates has to be levied on actual Shore Tank Receipt Quantity - Such findings of the Tribunal were upheld by the Apex Court - In the present case, the rate of NCCD is specific and not ad valorem - Therefore the demand for differential NCCD based on bill of lading or Ullage report is unsustainable: CESTAT

Assessee's appeal allowed

Case laws cited:

Bharat Petroleum Corporation Limited Vs. C.C. - 2015-TIOL-211-CESTAT-MUM... Para 2...followed

Commissioner Vs. Bharat Petroleum Corporation Limited 2016 (334) ELT A119 (SC)... Para 2

Union of India Vs. Jain Shudh Vanaspati Ltd - 2002-TIOL-585-SC-CUS ... Para 3

Mahindra & Mahindra Ltd Vs. CC (Import), Mumbai- 2014 (312) ELT 545 (Tri-Mum) ... Para 3

Sandur Maganese & Iron Ores Ltd. Vs. CC, Chennai- 2007 (211) ELT 505 (Tri-Chennai) ... Para 3

FINAL ORDER NO. A/11828/2019

Per: Ramesh Nair:

The issue involved in the present case is that whether National Calamity Contingent Duty levied at specific rates is to be levied on actual Shore Tank Receipt Quantity or on the basis of Ullage Report/Bill of Lading Quantity. The case of the department is that the NCCD should be levied on the quantity as per bill of lading and not on actual shore tank receipt quantity. Accordingly the demand of the duty on the differential quantity between bill of lading quantity and actual Shore Tank Receipt Quantity was confirmed by the lower authorities therefore, the present appeal.

2. Shri A. Sheeraji, Ms. Dimple Gohil & Shri Roshil Nichani advocates appeared. Ms. Dimple Gohil submits that since in the present case National Calamity Contingent duty is levied at specific rates, the same shall be payable on actual Shore Tank Receipt Quantity and not on the basis of bill of Lading. She

referred to Board Circular No. 34/2016-CUS Dtd. 26.07.2016 wherein it was clarified that in case of Bulk Liquid Cargo Imports, the shore tank receipt quantity should be taken as basis for levy of Custom Duty, irrespective of whether Custom Duty is leviable at specific rate or at Ad valorem basis. She further referred to Board Circular No. 6/2006-Cus dated 12.01.2006 whereby it was again clarified that where duty is leviable at specific rate quantity determined during the Shore Tank Measurement should be accepted. She further submits that the issue is no longer Res- Integra as the same was decided in the case of Bharat Petroleum Corporation Limited Vs. C.C. -2015 (320) ELT 294 (Tri. Mum.) = 2015-TIOL-211-CESTAT-MUM. The said judgment was upheld by the Hon'ble Supreme Court by dismissing the Revenue Civil Appeal which is reported at Commissioner Vs. Bharat Petroleum Corporation Limited 2016 (334) ELT A119 (SC).

3. Shri Govind Jha, Ld. Superintendent (AR) appearing on behalf of the Revenue reiterates the impugned order. He further relied upon the following Judgments.

- 1996 (86) ELT 460 (SC) – Union of India Vs. Jain Shudh Vanaspati Ltd = 2002-TIOL-585-SC-CUS

- 2014 (312) ELT 545 (Tri-Mum) – Mahindra & Mahindra Ltd Vs. CC (Import), Mumbai

- 2007 (211) ELT 505 (Tri-Chennai) – Sandur Maganese & Iron Ores Ltd. Vs. CC, Chennai

4. We have carefully considered the submissions made by both the sides and perused the record. We find that this Tribunal in the case of Bharat Petroleum Corporation Limited (Supra) considered the very same issue where in all the relevant Circular were also considered and conclusively held that national calamity contingent duty levied at specific rates has to be levied on actual Shore Tank Receipt Quantity.

"4.2.3 In view of the above factual and legal position, we answer this question in favour of Revenue and against the appellant. In other words, when the rate of duty is ad valorem and payment is made for the bill of lading quantity without any adjustment in value for the various losses, it is on the transaction value that the duty liability has to be discharged and not on the basis of the quantity of bulk liquid cargo which is actually received. As regards the various case laws relied upon by the appellant, we find that they are not relevant to the facts of the present case before us. However as regards NCCD duty which is levied at specific rates, the above analysis will not apply and they will have to be levied on the actual shore tank receipt quantity and we hold accordingly. "

5. From the above decision of the Tribunal which was upheld by Hon'ble Supreme Court, it was clearly held that NCCD Duty which is levied at specific rates, it will be levied on the actual Shore Tank receipt Quantity. In the present case also the rate of NCCD is a specific rate and not Ad valorem. Therefore, the ratio of the above Judgment which finally settled by the Hon'ble Supreme Court is squarely applicable in the present case. Therefore, the demand of differential NCCD based on Bill of Lading/Ullage Report is not sustainable.

6. Accordingly the demand is set aside appeal is allowed.