**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI**

COURT HALL No.III

CUSTOMS APPEAL No. 42107 OF 2013

(Arising out of Order-in-Appeal C.Cus.No.876/2013 dt. 27.06.2013 passed by Commissioner of Customs (Appeals), No.60, Rajaji Salai, Custom House, Chennai 600 001)

The Commissioner of Customs **.... Appellant**
Import Commissionerate,
No.60, Rajaji Salai,
Chennai 600 001.

Versus

M/s. Tamilnadu Petroproducts Ltd. **...Respondent**
Manali Express Highway,
Manali,
Chennai 600 068.

APPEARANCE :

Ms. Anandalakshmi Ganeshram, Supdt. (A.R)
For the Appellant

Ms. Vishnu Priya, Advocate
For the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 14.07.2023
DATE OF DECISION : 19.07.2023

FINAL ORDER No.40584/2023

ORDER : Per Ms. SULEKHA BEEVI, C.S.

This is an appeal filed by M/s.Tamilnadu Petroproducts Ltd. against the order passed by Commissioner (Appeals) who dismissed the department's appeal upholding the order passed by the adjudicating authority finalising the assessment.

2.1 Brief facts of the case are that the respondent viz. M/s. Tamilnadu Petroproducts Ltd. imported 15 consignments of catalyst (Pacol Catalyst) during the period 1994-95. The imported catalyst covered by these Bills of Entry include what was manufactured by the foreign supplier, by utilizing the retrieved sponge platinum from these 'spent catalysts' which were previously exported by the importer to his foreign supplier, for retrieving the platinum sponge material from the spent catalyst and utilizing it also in the manufacture of active catalyst and supplied the same to the importer vide various Bills of Entry.

2.2. The chain of the transaction is that the importer uses the imported catalyst in his production activities, and in course of time, the catalyst becomes "spent catalyst" and looses its function as an (active) catalyst. The importer exports such spent catalyst to his foreign supplier.

2.3 As per the agreed terms of the contract between the importer-respondent and the foreign supplier, the supplier retrieves the sponge platinum from the spent catalyst received from the importer and utilizes it in the process to generate (active) catalyst, and supplies

the same to the importer. The impugned Bills of Entry pertain to such consignments (with retrieved sponge platinum) also contained in pre-imported (active) catalyst.

2.4 The 'Retrieved platinum' is not charged (separately) by the supplier and his invoice price is for the (active) catalyst only which is supplied by him. Consequently, the retrieved platinum is 'free of cost' supply to the importer, as per the agreed terms between them.

2.5 Due to the above facts, all Bills of Entry were assessed provisionally under Section 18 (1) of Customs Act, 1962, by obtaining Bond with Bank Guarantee from the respondent pending examination, as to the inclusion of the appropriate value or otherwise, of the 'free of cost' supply of 'platinum sponge contained in the imported catalyst so as to arrive at the assessable value of the active catalyst, supplied by the supplier as per the provisions of Customs Law (Section 14 (1) of Customs Act, 1962 read with Customs Valuation Rules, 1988).

2.6 Notification 296/92-Cus. dt. 18.11.92 had provided duty exemption (subject to certain conditions) to the value of the 'Retrieved platinum sponge' contained in the active catalyst supplied by the supplier to an importer. The said notification was withdrawn from 01.03.1994. Consequently, the value of Platinum sponge supplied 'free of cost' is liable to be included in the value of the active catalyst reimported in terms of Rule 9 (1) (b) (i) & (iii) of Customs Valuation Rules, 1988 which envisages inclusion of value of such material supplied free of cost.

2.7 The matter was taken up with Board, to ascertain, as to whether any Notification (similar to the rescinded one, from 1.3.1994) is likely to be issued with retrospective effect or any relief would be provided by issue of a notification under Section 28A of Customs Act, 1962, but no such notification was issued by the Government. In absence of any such notification these 15 bills of entry were taken up for finalization of assessment.

2.8 A letter dt 24.01.2008 was issued to the appellant informing them that the provisional assessments have been finalized and that they have to pay differential duty of Rs.4,46,52,104/- in respect of the imports made against 15 Bills of Entry. After due process of law, the adjudicating authority observed that though Notification No.296/92 exempted the value of such retrieved platinum sponge material with certain conditions, the said notification has been withdrawn on 01.03.1994 and there was no similar exemption notification. The 15 bills of entry were thus finally assessed and demand of differential duty of Rs.4,46,52,014/- was confirmed. The respondent was asked to pay the balance amount of Rs.80,43,735/-. Aggrieved by such order, the respondent filed an appeal before the Commissioner (Appeals) and vide order dt. 06.10.2008, the Commissioner (Appeals) remanded the matter to the adjudicating authority with specific directions to look into the valuation in respect of arithmetical issue and legal issue. In such *de novo* adjudication, the original authority finalized the assessment totally amounting to Rs.3,72,25,043/-. Against the said order, where the duty amount was

reduced, the department filed an appeal before the Commissioner (Appeals) and vide order impugned herein the Commissioner (Appeals) upheld the order passed by the original authority. Hence the department is now before the Tribunal.

3. Ld. A.R Ms. Anandalakshmi Ganeshram reiterated the grounds of appeal. It is submitted that there is difference in the differential duty which was confirmed in the first assessment order and in the subsequent assessment order. The exact method of valuation and re-quantification of duty amount of Rs.3,72,25,043/- is not clearly forthcoming from the *de novo* order passed by adjudicating authority. It is submitted by the Ld. AR that if the international price of platinum sponge is taken as the basis, it is not clear whether it is the price with respect to the LME or any other standard. Further, the adjudicating authority has not done any cross verification with regard to the test report quantifying the quality of platinum sponge on consignment wise. The basis for acceptance of quantifying the quality of platinum in each individual import consignment has not been explained in the OIO. No metallurgical and chemical analysis was carried out in a recognized laboratory in order to verify the quantum of platinum used in manufacturing one unit of catalyst. The adjudicating authority ought to have included the freight and insurance charges also. The adjudicating authority not having mentioned these aspects in the OIO, the Commissioner (Appeals) ought to have allowed the appeal filed by the department. Ld. A.R prayed that the appeal may be allowed.

4. Ld. Counsel Ms. Vishnu Priya appeared and argued for the respondent. Technical write up on Spent Catalyst was referred to by the Ld. Counsel and explained as under :

'Pacol Catalyst after it is used in Pacol unit for the manufacture of LAB is known as Spent Catalyst. It is re-exported to same supplier in UK/Japan either in the form of Spent Catalyst or in the form of platinum (after extracting Platinum from the Spent Catalyst through the job worker M/s.Hindustan Platinum Private Ltd., Mumbai).

Pacol Catalyst is manufactured by coating Platinum on Alumina base. When it is spent, the activity of the catalyst is lost because of the deposition of carbon on the catalyst surface. The platinum is then recovered from the catalyst by means of extraction process which is physical in nature as opposed to chemical process, i.e. there is no remanufacturing or re-processing through melting, recycling or recasting by the foreign supplier'.

5. It is submitted by the Ld. Counsel that in the earlier round of litigation, the Commissioner (Appeals) had remanded the matter giving specific points for consideration by the original authority. These points have been rightly considered by the original authority for passing the order. In the *de novo* order, Rule 9 (1) (b) (i) of the Customs Valuation Rules, 1988 was followed by the original authority in arriving at the 'cost' of the material issued as free of cost.

6. In this regard, it is submitted that, in the original adjudication order dt. 06.10.2008, the adjudicating authority had loaded various expenses such as export freight and insurance charges which resulted in the freight attributable to each export getting included in the assessable value. Therefore, in order to rectify the said anomaly, in the *de novo* adjudication order, the adjudicating authority has correctly excluded the export freight and insurance charges to arrive at the cost of the material.

7. In regard to the grounds in appeal in respect of price of platinum, it is submitted by the Ld. Counsel for respondent, that the international table called the "Johnson Matthey Platinum table" was adopted by the adjudicating authority to arrive at the value of platinum at the time of export from the foreign country.

8. With regard to the quantum of platinum usage, consignment wise, in the manufacture of Pacol Catalyst, it is submitted that the said details were placed before the adjudicating authority which forms the basis for his calculation of duty. At the time of adjudication, the certificate of analysis was given by the foreign exporter, which contained the details of the weight and volume of the fresh catalyst dispatched and the details of the platinum quantum (in percentage-gms) present in the said catalyst.

9. The Ld. Counsel explained that the difference in the original assessment and the *de novo* assessment is mainly because of the following :

a) The freight element and the customs duty paid at the time of the entry into the country each and every time or earlier occasions had been added to the assessable value in the earlier assessment order. In order to rectify this mistake these elements were deducted in the *de novo* assessment order.

b) The value of the platinum prevailing on the relevant date when the foreign supplier prepares the Bill of Lading has been taken as the basis in the *de novo* assessment order.

(c) The freight and insurance have been taken on actual basis wherever it is available for the purpose of assessment and in cases where it is not available, the respondent has complied with the OIO dt. 18.03.2008.

10. Ld. Counsel adverted to para 7 of the impugned order and submitted that the Commissioner (Appeals) has correctly observed that the department has filed the appeal more on 'generic grounds' than specific grounds and the grievances the department has raised are without any factual basis. Even before the Tribunal only generic grounds have been raised. If at all there is any procedural or legal deviation, the department ought to have raised the specific grounds

in their appeal which is totally absent. Ld. Counsel prayed that appeal may be dismissed.

11. Heard both sides.

12. The ground raised by the department is that the freight has not been included in the assessable value for the purpose of assessment. It is brought out from the submissions made by the Ld. Counsel for the respondent as well as records that the there was an issue of adding the element of freight to each export which was incorrect. We find that the same has been excluded by the adjudicating authority. The Commissioner (Appeals) while remanding the matter has put forward the points for consideration at arithmetic level as well as legal level. These points have been correctly considered by the adjudicating authority in the *de novo* order. On perusal of the grounds stated in this appeal filed by the department, we find that the argument put forward by the Ld. Counsel for the respondent that the department has not put forward any specific point to negate the calculation of the differential duty is not without substance. We also take note that the very same reason was the basis to dismiss the appeal filed by the department by the Commissioner (Appeals). In spite of that there is no specific deviation or mistake pointed out by the department in the appeal grounds. It is noted by the Commissioner (Appeals) in para-8 that the original authority has elaborately enumerated the method of arriving the quantity and value of platinum for each bill of entry and apart from the same has highlighted the difference in differential duty arrived at the time of

earlier assessment and the *de vono* adjudication. We find that the grounds of appeal are just based on surmises and do not put forward the any point to be considered. We do not find any reason to interfere with the order passed finalizing the assessment.

13 In the result, the impugned orders is sustained. Appeal filed by the department is dismissed.

(pronounced in court on 19.07.2023)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(SULEKHA BEEVI C.S.)
Member (Judicial)

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