# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
## CHANDIGARH

REGIONAL BENCH - COURT NO. I

**Excise Appeal No. 51149 of 2014**

[Arising out of Order-in-Original No. 65/CE/COMMR/RTK/2013-14 dated 26.11.2013 passed by the Commissioner of Central Excise, Rohtak]

**Indian Oil Corporation Ltd** **……Appellant**
Panipat Refinery, Village Baholi,
Panipat, Haryana 132103

*VERSUS*

**Commissioner of Central Goods & Service Tax, CGST, Panchkula** **……Respondent**
GST Bhawan, Sector 25, Panchkula, Haryana 134116

**APPEARANCE:**

Present for the Appellant: Ms. Krati Singh and Ms. Jashanpreet Kaur, Advocates

Present for the Respondent: Sh. Aneesh Dewan with Shri Narinder Singh Authorized Representatives

**CORAM:**

**HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**
**HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 60453/2025**

DATE OF HEARING: 24.03.2025
DATE OF DECISION: 24.03.2025

**P.ANJANI KUMAR**

Heard both sides and perused the record of the case, the appellants, M/s Indian Oil Corporation Ltd, Panipat have cleared Superior Kerosene Oil ('SKO'), to their Guwahati unit during the period February 2009 to March, 2012, availing the exemption clearance of SKO under Public Distribution System ('PDS') intended to supply under Public Distribution System. However, the appellants

noticed that a part of the SKO cleared was used for the purposes other than it was intended. Accordingly, the appellants on their own have paid the applicable differential Central Excise Duty along with interest before the issuance of show cause notice. In spite of this positive act, Revenue issued a show cause notice dated 11.04.2013 proposing to appropriate the Central Excise Duty of Rs. 1,58,73,895 deposited by the appellants along with interest and proposing to impose penalty under Section 11AC of the Central Excise Act, 1944. The show cause notice was adjudicated by the impugned order dated 26.11.2013, hence this appeal.

2. Ms. Krati Singh, learned counsel for the appellant submits that though the appellants have a fair case on merits, looking into the facts that the applicable duty was paid by the appellant and was recovered from their Assistant concern at Guwahati, they are not contesting the issue on merits. However, considering the facts that the applicable duty has been paid along with interest before issuance of show cause notice and because the appellant is a public sector unit, penalty cannot be imposed. She relies upon the following cases in support of her contention:

- *Novely exports Vs. Commissioner of C. Ahmedabad 2024-TIOL-1170-CESTAT-AHM.*
- *M/s U.P. State Spining Company Ltd. Vs. Commissioner of Central Excise & S.T. Allahabad 2019-TIOL-1627-CESTAT-ALL.*
- *M/s Sri Durga Mills Vs. CCE, Kanpur 2013 (293) ELT 744 (Tri.-Del.)*
- *Ritika Pharmatech Vs. Commissioner of Customs, New Delhi 2019 (370) ELT 626 (Tri.-Del.)*

- *Saurashtra Chemicals Ltd. Vs. Commr. Of Customs, Jamnagar 2019 (365) ELT 920 (Tri.-Ahmd.)*
- *JSW Steel Ltd. Vs. Commissioner of C.Ex & S.T., Goa 2016 (343) ELT 717 (Tri. – Mumbai).*

3. Learned Authorized Representative reiterated the findings of the impugned order.

4. Heard both sides and perused the material on record of the case. In the instant issue, nothing has been brought on record to indicate any *mens rea* on the part of the appellants as the applicable duty as well as interest have been paid before issuance of the show cause notice. It has been held in a number of cases under identical circumstances, that penalty cannot be imposed under Section 11AC of the act. Considering also that the appellant is a PSU, intent to evade payment of duty, cannot be alleged and therefore penalty under Section 11AC of the Central Excise Act, 1944 cannot be imposed.

5. We find that this Tribunal in the appellant's own case ***2022-TIOL-539-CESTAT-AHM*** held as under:

> *"26. As far as imposition of penalty is concerned, we find that it is a settled legal position that in cases where sue involved is the classification dispute and interpretation of rules/law/exemption notification are involved, no penalty can be imposed. In the present mater no penalty is imposable upon the appellant under Rule 173Q of the Central Excise Rules 1944 as the applicant has not violated any Rules/provisions with intention to evade payment of duty. It is only a matter of difference of opinion regarding classification of goods between the applicant and by the*

*department. Therefore penalty needs to be set aside and we do so*

*27. Further, since the Applicant are public-sector undertaking, the allegation of mis-statement, or suppression of fact or contravenes provisions of Rule with intent to evade the payment of duty can not be alleged. It is unconceivable that the public sector undertaking would try to evade the payment of duty by resorting the wilful suppression of facts or contravention of provisions of law. We also observed that, Tribunal's in the case of* ***Western Coal Fields Ltd. v. CCE, Nagpur-2003 (161) ELT. 768 (Tri-Mumbai) and ONGC v. CCE, Vadodara 1995 (78) ELT. 117 (Tribunal)*** *took a view that being a Public Sector Undertaking wholly owned by the Government of India, they could not have evaded the duty and therefore a harsh penalty cannot be imposed". l*

6. In view of the above, we are of the considered opinion that the impugned order cannot be sustained and is liable to be set aside. We do so.

7. Accordingly, the appeal is allowed.

(Dictated and pronounced in the open court)

**(S. S. GARG)**
**MEMBER (JUDICIAL)**

**(P. ANJANI KUMAR)**
**MEMBER (TECHNICAL)**

Kailash