IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.376 of 2019

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The Commissioner of Central Excise and Services Tax Patna now Commissioner, Central GST and Central Excise Patna-II, C.T.T.C. Building, Sanchar Parishar, Buddh Marg, Patna-800001

... ... Appellant/s

Versus

M/s Indian Oil Corporation Limited Barauni Refinery, Begusarai, Bihar

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Dr. K.N. Singh, ASG Mr. Anshuman Singh, Sr. SC Mr. Shivaditya Dhari Sinha, Advocate Mr. Abhinav, Advocate
For the Respondent/s	:	Mr. D.V. Pathy, Senior Advocate Mr. Mohit Agarwal, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA)

Date:14-05-2026

Heard Dr. K.N. Singh, learned ASG appearing for the appellant and Mr. D.V. Pathy, learned senior counsel appearing for the respondent.

2. The maintainability of the present appeal has already been decided under Section 35G of the Central Excise Act, 1944 (1 of 1944) vide its detailed order dated 18.03.2026.

3. Now, again, the issue of maintainability raised by Mr. D.V. Pathy, learned senior counsel appearing for respondent on the ground of pecuniary jurisdiction.

4. This is the second occasion, when maintainability of the present appeal was raised in piecemeal. The core reason supplied for non-maintainability of present appeal is Judicial Cell Notifications/Instructions dated 22.08.2019 and 06.08.2024 as issued by the Central Board of Indirect Taxes and Customs, Ministry of Finance, Department of Revenue.

5. For better understanding of the case, the aforesaid Notifications/Instructions dated 22.08.2019 and 06.08.2024 as issued by the Central Board of Indirect Taxes and Customs, Ministry of Finance, Department of Revenue are reproduced hereinbelow:-

(i) **"F. No.390/Misc./116/2017-JC**
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes & Customs
(Judicial Cell)
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'B' Wing, 4th Floor, HUDCO VISHALA Building Bhikaji Cama Place, R.K. Puram, New Delhi-66

Date-22.08.2019

INSTRUCTION

To

1. All Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/Commissioners of Customs/Customs (Preventive)/GST & CX;

2. All Principal Director Generals/Director Generals under CBIC;

3. Chief Commissioner (AR); Commissioner (Legal), Principal Commissioner, Directorate of Legal

Affairs, CBIC;

4. webmaster.cbec@icegate.gov.in

Subject: Reduction of Government Litigation-Raising of monetary limits for filing appeals by the Department before CESTAT, High Courts and Supreme Court in legacy Central Excise and Service Tax- regarding.

In exercise of the powers conferred by Section 35R of the Central Excise Act, 1944 and made applicable to Service Tax vide Section 83 of the Finance Act, 1994, the Central Board of Indirect Taxes and Customs fixes the following monetary limits below which appeal shall not be filed in the CESTAT, High Courts and Supreme Court.

S. No.	Appellate Forum	Monetary Limit
1.	CESTAT	Rs. 50,00,000/-
2.	High Courts	Rs. 1,00,00,000/-
3.	Supreme Court	Rs. 2,00,00,000/-

2. This instruction applies only to legacy issues i.e. matters relating to Central Excise and Service Tax, and will apply to pending cases as well.

3. Withdrawal process in respect of pending cases in above forums, as per the above revised limits, will follow the current practice that is being followed for the withdrawal of cases from the Supreme Court, High Courts and CESTAT. All other terms and conditions of concerned earlier instructions will continue to apply.

4. It may be noted that issues involving substantial questions of law as described in para103 of the instruction dated 17.08.2011 from F. No.390/Misc./163/2010-JC would be contested irrespective of the prescribed monetary limits.

5. Since withdrawal of Departmental Appeals is a long drawn activity requiring routine and constant monitoring, formats have been introduced in the Monthly Performance Report for all field formations to

send monthly reports regarding status of withdrawal of appeals in the MPR (refer table P/P-1). Details of the said cases should also be available in a separate register for further perusal by the Board as and when required. Tables are in the Annexure-A attached. The description of the Tables in brief is provided below.

a) Table P: Position of withdrawal with reference to raised monetary limits SC/HC/CESTAT (as per instruction dated 22/08/2019)

b) Table P-1: Remaining to be filed/withdrawn SC/HC/CESTAT.

Sd/
22.8.2019
(Rohit Singhal)
Director (Review)

(ii) F. No.390/Misc./116/2017-JC
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes & Customs
(Judicial Cell)
******

'B' Wing, 4th Floor, HUDCO VISHALA Building Bhikaji Cama Place, R.K. Puram, New Delhi-66

Date-06.08.2024

Subject: Reduction of Government Litigation- Raising of monetary limits for filing appeals by the Department before CESTAT/High Courts and Supreme Court in Legacy Central Excise and Service Tax- reg.

In exercise of the powers conferred by Section 35R of the Central Excise Act, 1944 made applicable to Service Tax vide Section 83 of the Finance Act, 1994, and in partial modification of the Board instructions issued from F. No.390/Misc./163/2010-JC dated 17.08.2011, the Central Board of Indirect Taxes and Customs hereby fixes the following monetary limits below which appeal shall

not be filed in the CESTAT, High Court and Supreme Court:

S. No.	Appellate Forum	Monetary Limit
1.	CESTAT	Rs. 60 lakhs
2.	High Courts	Rs. 2 Crore
3.	Supreme Court	Rs. 5 Crore

2. This instruction applies only to legacy issues i.e. matters relating to Central Excise and Service Tax, and will apply to pending cases as well.

3. Adverse judgments relating to the following should be contested irrespective of the amount involved-

a. Case where the constitutional validity of the provisions of an Act or Rule is under challenge; or

b. Case where Notification/ Instructions / Order/ Circular has been held illegal or ultra vires.

4. Except for the above, all other terms and conditions of instructions dated 17.08.2011 stands.

5. Relevant extracts from Section 35R of the Central Excise Act, 1944 are produced below for ease of reference-

> (2) Where, in pursuance of the orders or instructions or directions, issued under sub-section (1), the Central Excise Officer has not filed an appeal, applications, revision or reference against any decision or order passed under the provisions of this Act, it shall not preclude such Central Excise Officer from filing appeal, application, revision or reference in any other case involving the same or similar issue or questions of law.
>
> (3) Notwithstanding the fact that no appeal, application, revision or reference has been filed by the Central Excise Officer pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal, application, revision or reference shall contend that the Central

Excise Officer has acquiesced in the decision on the disputed issue by not filing appeal, application, revision or reference.

4. The Commissioner (Appeals) or the Appellate Tribunal or court hearing such appeal, application, revision or reference shall have regard to the circumstances under which appeal, application, revision or reference was not filed by the Central Excise Officer in pursuance of the orders or instructions or directions issued under sub-section (1).

6. Difficulties faced in implementation of these instructions, if any, may be brought to the knowledge of the Board.

(Bhagwat Sharma)
Deputy Secretary (Judicial Cell)
Email; sojc-cbec@nic.in
Signed by Bhagwat Prasad Sharma
Date: 06-08-2024

To
Pr. Chief Commissioner/Chief Commissioner CGXT & CX (All Zones)
Commissioner (Appeals) CGST & CX (All Zones) ADG (DGGI)".

6. The aforesaid Notification dated 06.08.2024 said in Paragraph No. 3 as mentioned aforesaid on its face speaks that the adverse judgment related with constitutional validity of the provisions of an Act or Rule, where Notifications/ Instructions/ Order / Circular, which has been held illegal or ultra vires or classification and refund issues, which are of legal and/or recurring nature may be entertained irrespective of the amount involved as mentioned aforesaid.

7. Contrary to the aforesaid submission, it is pointed out by Dr. K.N. Singh, learned ASG duly assisted by Mr. Manish Kumar, learned counsel appearing for appellant that the present memo of appeal is maintainable for the reason that the substantial questions of law is involved in this case as **"Whether terminal facility/ware-housing is a distinct service liable to Service Tax under the provisions of the Act and Rules"** and, therefore the present appeal is maintainable. It is also pointed out that the ground of pecuniary jurisdiction was not raised by respondent through its first counter affidavit dated 31.08.2021 and by that time entire focus was on its maintainability in view of Section 35G of the Central Excise Act, 1944, which is already decided by this Court vide order dated 18.03.2026 and subsequently, by separate counter affidavit dated 22.04.2026, present objection *qua* maintainability on the ground of pecuniary jurisdiction has been raised by the respondents, just to delay the hearing.

8. It would be relevant to quote paragraph nos.29 and 30 of the counter affidavit dated 22.04.2026, which runs as under:-

> "29. That in the present case, it is not the general substantial question of law, as provided under Section 35G of the Central Excise Act, 1944 is to be

considered for carving exception to the monetary limits prescribed vide instruction dated 22.08.2019 or 06.08.2024, rather it is the substantial question of law as described in Para 1.3 of the instruction dated 17.08.2011 in terms of Clause 4 of the instruction dated 22.08.2019 or the exceptions as specifically provided under Clause 3 of the instruction dated 06.08.2024, which exceptions are not being made out in the facts of the present case as neither the provisions of any Act or Rule is under challenge either by the Appellant or the Respondent nor any notification/instruction/circular/order has been held to be ultra vires by the Learned Appellate Tribunal. Thus, the present Appeal is fit to be dismissed in view of the instruction dated 22.08.2019 and/or dated 06.08.2024 as the present case do not involve the case or service tax in dispute either above Rs.1,00,00,000/- or Rs.2,00,00,000/- as prescribed vide Notifications dated 22.08.2019 and 06.08.2024 respectively.

30. That in view of the aforesaid Instructions dated 17.08.2011 read with Instructions dated 22.08.2019 and 06.08.2024 which have been issued by the Central Board of Indirect Taxes & Customs in exercise of power under Section 35R of the Central Excise Act, 1944 (as made applicable to the Service Tax vide Section 83 of the Finance Act, 1994), the present appeal is not maintainable in view of the fact that the Sarice Tax in dispute is not above the monetary limit of Rs.2,00,00,000/- and Rs.1,00,00,000/- as prescribed vide instruction dated 08.06.2024 and 22.08.2019 respectively nor the

> substantial question of law raised falls under the exclusion provided in Clause 4 of Instruction dated 22.08.2019 or Clause 3 of Instruction dated 06.08.2024 and thus is fit to be dismissed on this score itself without going into the merits of the present case."

9. From the aforesaid Notifications, it is clear that substantial question of law can be raised irrespective of the prescribed monetary limits as discussed aforesaid in terms of Notification dated 22.08.2019 & 06.08.2024.

10. Admittedly, the present appeal has been filed for evading the payment of service tax of Rs.58,00,063/- (including Cess) for the period from July 2003 to March 2007 and Rs. 23,47,782/- (including Cess) for the period from April, 2007 to March, 2008 for which two separate appeals i.e. Appeal Nos.31 of 2009 and 285 of 2009 were filed, which was decided through common impugned order. Therefore, the total tax evaded is Rs.81,47,845/-, and is less than 1 Crore, which is not a permissible limit for adjudication in terms of Notifications dated 22.08.2019 and 06.08.2024 before this Court and on this score the argument of Mr. Pathy appears convincing, which was also not disputed by appellant.

11. Therefore, we have to examine second aspects in terms of aforesaid notifications, whether the dispute involves

any **"substantial questions of law or not"**.

12. The factual matrix of the case suggest that one Memorandum of Understanding (in short 'MOU') dated 18th April, 2003 was drawn between two public sector companies i.e. Indian Oil Corporation Ltd. (in short 'IOCL') and Bongaigaon Refinery and Petrochemicals Ltd. (in short 'BRPL') for supplying crude oil from Haldia to Bongaigaon Refinery through pipeline. The transportation of crude oil completed in three steps as:-

(i) Through pipeline from Haldia to Barauni;

(ii) In Barauni, it is stored in tank for further transportation and;

(iii) From stored tank of Barauni Refinery to Bongaigaon, Assam.

The service tax was paid by IOCL for the first mode of transportation under category "Transportation of goods, other than water through pipeline or liquid conduit" service.

13. The service tax on third mode of transportation is also not under dispute. The dispute which was raised that the second part of the chain of transportation, which is storing by the IOCL for further transportation as indicated aforesaid is whether incidental or intermediary of first service i.e. service

through pipeline or independent service within the meaning of "Store and Warehouse" in terms of Section 65 (102) of the Finance Act, 1994.

14. From the perusal of original order as passed by the Commissioner, Central Excise & Service Tax, Patna dated 31.10.2008 and 31.08.2009 (Annexure-3 and 5), it transpires to us that the same was passed after detailed discussion of the relevant documents regarding financial transactions, as audit report, balance sheet, etc. It was also passed by considering the MOU as mentioned aforesaid and finally held that the second step of supply, which was related with the "storing of crude oil" was not incidental to the first step and, therefore, liable to pay the service tax and penalties in terms of show cause notice dated 01.11.2007.

15. The aforesaid order was reversed by CESTAT, East Zone Bench, Kolkta vide its order dated 26.10.2018 through Service Tax Appeals No.31 and 285 of 2009 which is the order under challenge. We find that on the certain material factual aspects, appellate tribunal failed to touch aforesaid core issue and, thus, we are convinced enough that the substantial questions of law is involved in the matter, as the finding of the Tribunal is directly and substantially affecting the right of the

appellant/department.

16. Hence, we are of the view that the present appeal is maintainable before this Court, as the substantial questions of law appears involved herein irrespective of the financial limitations, as discussed aforesaid.

17. Besides as decided aforesaid, learned counsel appearing for the parties agreed that the present appeal be heard finally under Order 41 Rule 11 of the CPC.

18. Accordingly, considering the argument and the materials available on record, the following substantial question of law formulated by us as to settle the issue:-

> **"Whether the second step of service i.e. storing/warehousing of raw crude oil at Barauni Refinery is incidental to the pipeline service or independent terminal facilities in terms of MOUs and other materials available on record?"**

19. Factual background of present appeal suggests that the present dispute raised, when it was noticed by the Audit Team that the BRPL was receiving crude oil through Haldia-Barauni Pipeline Limited (HBCPL) from 01.04.2003 for which the terminating facilities of 'Barauni Refinery' is used for storage from where it was dispatched to BRPL for which the 'Barauni Refinery was charging terminating charges shown as "Miscellaneous Income Recovery of maintenance charges or

facility for other" under Code-375, in trial balance during period 2003-04, 2004-05, 2005-06, 2006-07. A credit device (Dr./Cr. Note No.2214) being Rs. 1,16, 89,499/- in 2003-04 and such service value for the same service during 2004-05, 2005-06 and 2006-07, consisting total service valuation of Rs.5,81,04,122/- towards terminating charges of raw crude was received and booked under the above-mentioned head. The details of service tax, which was not paid amounting to Rs.58,00,063/-. For aforesaid evasion of service tax and different penalties under service tax Act and its Rule, a notice was issued to M/s. IOCL, Barauni Refinery, Begusarai, Bihar.

20. The aforesaid demand was denied, as raised wrongly, for the reason that the IOCL is not providing any "storage and warehousing" service to BRPL in transportation of crude oil from Haldia to Bongaigaon and also that the pipeline division of M/s. IOCL transports crude oil is already paying service tax for "Transfer of Goods through Pipeline".

21. It was also contended in support of denial that the terminal charges received by Barauni Refinery was nothing but the inter-unit transactions, which got eliminated at the time of consolidations and there is no receipt in the books of account of the company towards taxable service and, therefore, the service

tax is unwarranted as per provisions of Rule 6 (1 of said Rules).

22. It is also contended that terminating charges, which were shown in the trial balance of the respondent/noticee was for the purpose of internal evaluation of performance of the respective cost centre and for this no revenue accrued to the company.

23. The learned Commissioner while dealing with the matter took shelter of the nomenclature of the MOU of the appeal itself i.e. Haldia-Barauni crude oil pipeline suggesting that the MOU was drawn to transport the crude oil upto Barauni only.

24. In this context, it would be apposite to reproduce paragraph 1.5 of the MOU executed between IOCL and BRPL dated 18.01.2003, which is as under:-

> "1.5. DISCHARGE FACILITY: shall means all facilities to be created and works to be carried out by BRPL at its own cost necessary for hooking up/linking HBCPL to the DISCHARGE PIPELINE, including line balancing tank(s) at Barauni. As a short term measure, IOCL shall provide tankage available at its Barauni refinery, to be used for this purpose till such time it can be spared. The interconnection of such tank(s) to OIL's facilities or any other modifications required in this respect at Barauni, shall be carried out by IOCL at BRPL's cost."

25. A separate Consideration for aforesaid discharge facility was mentioned under Article 4 of the MOU.

26. The learned Commissioner, Service tax, Patna held that the "terminal" means "warehousing facility" in oil industry.

27. To examine the aforesaid, it would be apposite to reproduce Sub-Section 102 of Section 65 of the Finance Act, which defines "Storage and Warehousing" in the following manner:-

> **"65.(102). "Storage and Warehousing" includes storage and warehousing services for goods including liquids and gases but does not include any service provided for storage of agricultural produce or any service provided by a cold storage."**

28. Sub-Section (105) of Section 65 of the Finances Act enumerates those services which are "taxable services". Various kinds of services which are subjected to service tax are enumerated therein. We are concerned only with clause (zza) thereof, which deals with service pertaining to "Storage and Warehousing" of goods. Clause (zza) reads as under:-

> **"65.(105) (zza) to any person, by a storage or warehouse keeper in relation to storage and warehousing of goods."**

29. The cumulative reading of the aforesaid

provisions makes it abundantly clear that in order to levy service tax pertaining to "Storage and Warehousing" of goods, the following two conditions are required to be satisfied:-

(i) The goods in question have to come within four corners of the definition of "Storage and Warehousing" contained in sub-Section (102) of Section 65 of the Finance Act, 1994;

(ii) In order to attract service tax, there has to be an element of service provided by one person to the other for which charges for providing such services are collected.

30. The definition of "Storage" contained in *Black's Law Dictionary* as well as *Webster's Comprehensive Dictionary*, which defines the terms "store or "storage" in the following manner:-

> "(a) As per *Black's Law Dictionary* (7th Edn.), the word "store" means to keep goods, etc. in safekeeping for future delivery in an unchanged condition;
>
> (b) As per *Webster's Comprehensive Dictionary*, "store" as a verb means to put away for future use, to accumulate, to furnish or supply to deposit for safekeeping."

31. To understand the aforesaid in more clear terms, it would be apposite to reproduce paragraph Nos. 16 and 17 of

the legal report as available to us through **Indian Oil Corporation Limited vs. Andhra Pradesh Industrial Infrastructure Corporation Limited and Ors.** reported as **(2016) 14 SCC 655**, which are as under :-

> **"16.** More significant is the manner in which P. Ramanatha Aiyar's Advanced Law Lexicon, 4th Edn. gives the description of storage and warehouse. It is as follows:-
>
> **"Storage and warehousing**.—'STORAGE AND WAREHOUSING' includes storage and warehousing services for goods including liquids and gases but does not include any service provided for storage of agricultural produce or any service provided by a cold storage. [Finance Act (32 of 1994), Section 65(1)(87)]
>
> **17.** The above definition makes it clear that the goods which are meant for storage and warehousing services include liquid and gases as well. In Bijaya Kumar Agarwal v. State of Orissa (1996) 5 SCC1, this Court made the following observations which are apt in the context :
>
> "14. The dictionary meanings suggest that 'storing' has an element of continuity as the purpose is to keep the commodity in store and retrieve it at some future date, even within a few days. If goods are kept or stocked in a warehouse, it can be immediately described as an act of 'storage'. ..."

32. Summarizing all aforesaid factual aspects, we are convinced enough that without having any storage or

warehousing facilities, crude oil not be transhipped from pipeline to other mode of transport as arranged by BRPL. Therefore, the terminal facilities or discharge facilities is nothing but store and warehousing of the crude oil before entering into third step of transportation which to be arranged by BRPL for final destination of supply of crude oil..

33. The receiving of separate charge for aforesaid facilities is an admitted position in terms of MOU besides the charges received for pipeline division. It is almost an admitted position that in terms of MOU, the service tax or any tax shall be paid by pipeline division but, the factual aspect clearly suggests that the amount on which the service tax was paid by IOCL's pipeline division, not including the value of terminal charge or the charge for 'discharge facility' in terms of para-1.5 of the MOU.

34. Besides aforesaid issue, the other ancillary issues were also raised by learned counsel appearing for respondent that the respondent provided service to self i.e. to IOCL.

35. If this is the submission then, it is clear that the respondent admitting the terminal facilities/discharge facilities as a service to the kinds of store and warehouse activities but, same is not correct because goods i.e. crude oil admittedly

belongs to BRPL not the IOCL, Barauni and was separately charged also for said terminal facilities.

36. In support of this submission, learned counsel has relied upon the legal report of Hon'ble Supreme Court as available through **Gujarat State Fertilizers and Chemicals Limitede and Anr. vs. Commissioner of Central Excise** reported as **(2017) 5 SCC 198.**

37. Contrary to the aforesaid submission, it is submitted by Dr. K.N. Singh, learned ASG appearing for the appellant department that all the six requisite ingredients appears fulfilled in present chain of supply of crude oil from Haldia to make the activities of the respondent after terminating of supply of the crude oil through pipeline at Barauni within the meaning of taxable service and in support of his submission, learned ASG has relied upon para-22 of the legal report of Hon'ble Supreme Court as available through **Commissioner of Service tax, Ahmedabad vs. Adani Gas Limited** reported as **(2022) 18 SCC 750**,which is as under:-

> "22. The taxable service is defined as a service which is provided or which is to be provided by any person to another "in relation to supply of goods". The provision indicates that the goods may include machinery, equipment or appliances. The crucial ingredient of the definition is that the supply of

> tangible goods is for the use of another, without transferring the right of possession and effective control "of such machinery, equipment and appliances". Hence, in order to attract the definition of a taxable service under sub-clause (zzzzj), the ingredients that have to be fufilled are:-
>
> (i) The provision of a service;
>
> (ii) The service is provided by a person to another person;
>
> (iii) The service is provided in relation to the supply of tangible goods, including machinery, equipment and appliances;
>
> (iv) There is no transfer of the right of possession;
>
> (v) Effective control over the goods continues to be with the service provider; and
>
> (vi) The goods are supplied for use by the recipient of the service."

38. Taking note of aforesaid legal submissions in present factual scenario, it is clear that there is a provision of service as a discharge facilities in terms of MOU, which has been provided by IOCL to BRPL in connection with supply of tangible goods. There was no transfer of right of possession at any point and effective control over the goods continues to be with service provider and the goods i.e. crude oil are supplied for use by the recipient of the service.

39. Therefore, the contention of respondent that it was a self-service, i.e. to the IOCL itself is not a convincing argument and, as such, we are not inclined to accept this

argument.

40. The another ancillary submission which was raised by respondent that it would be amount to double taxation, as tax has already deposited by the parent company but, same is also not convincing for the reason that the terminal charge could not have been transferred to the pipeline division and, therefore, the pipeline division had no opportunities or occasion to pay service tax in actual on that portion of value or service, which was transferred as terminal charge.

41. The record also suggests that respondent failed to produce any evidence of value on which service tax was paid by the pipeline division and whether it includes terminal charges or not and, therefore, the submission *qua* double taxation is also not appears convincing to us.

42. In aforesaid context, it would be apposite to reproduce second para of page-8 and first para of page-9 of the order dated 31.10.2008 of learned Commissioner, Central Excise & Service Tax, Patna, which is as under:-

> ***"In the instant case terminal facility service was provided by noticee in connection with transport of crude from Haldia to Bongaingaon. The Pipeline Divison of IOC provided service towards "Transport of goods through Pipeline" upto Barauni and the noticee provided 'Terminal Facility' at Barauni and the BRPL arranged subsequent transport themselves.***

Pipeline Division of IOC paid service tax (as claimed by noticee) on the service provided by them, i.e. "transport of goods through Pipeline" upto Barauni. But the noticee failed to pay service tax on "Terminal Facility" provided by them. Noticee never declared to the Department that any such MOU has been signed by IOC with BRPL and also that in that regard, noticee was providing 'Terminal Facility' to BRPL in connection with transport of Crude from Haldia to Bongaingaon. This fact got revealed when CERA conducted an Audit of their records. Thus, it is a case of mass suppression of facts with intent to evade payment of service tax. When the fact of MOU and receipt of 'Terminal Charges' got revealed, the noticee tried to distort the fact by saying that they had not provided any warehousing and storage facility as they claimed that all services were provided by their Pipeline Division. Pipeline Division of IOC is not having any terminal facility available at Barauni which is available only with the noticee. Besides, their Head Office would not tranfer any money to them (noticee) towards 'Terminal Charges' if they had actually not provided any terminal facility. Thus such a declaration was only a mis-statement of facts by noticee. Noticee during adjudication proceedings claimed that their Pipeline Division had paid service tax on entire amount. But they did not produce any evidence in this regard. It is a fact that service charges from BRPL were received by IOC's Head Office and the IOC's Head Office, thereafter transferred 'Terminal Charges' to noticee and charges towards 'transport through Pipeline' to their Pipeline Division. It was quite natural that under such a situation, the Pipeline Division paid service tax only on that portion of service charges which was

transferred to them for providing 'transport through Pipeline' and not on 'Terminal Charges' which was directly transferred by IOC's Head Office to noticee. However, noticee claimed, without evidence that their Pipeline Division paid service tax on 'Terminal Charges' also. This is another attempt of noticee to mis-represent the facts with fraudulent intentions of evading service tax since noticee was well aware of their company's system of accounting and transfer of due share of payments which was transferred to them as 'Terminal Charges'. In view of facts above, noticee were required to pay service tax on 'Terminal Charges' but they neither obtained registration for same, nor paid the due service tax. They also did not file any periodical return for the same. Thus it was an attempt of willful contravention of provisions of Sections 67, 68, 69 & 70 of the said Act and Rule 4, 5, 6 & 7 of said Rules with intent to evade payment of duty. The service charges realised were not declared thus suppressed by them. Therefore extended period under Section 73 of the said Act as well penalty under Section 78 of the Act are applicable in this case.

In view of above, I hold that the noticee intentionally evaded and failed to pay service tax amounting to Rs.58,00,063.00 during the period July 2003 to March 2007 under the category 'Storage & Warehousing' against the 'Terminal Charges' received by them, which is recoverable from under Section 73(2) of the said Act with interest under Section 75 of the said Act and penalty under Section 76 of the said Act. Noticee are also liable for an additional penalty under Section 78 of the said Act since the said amount of service tax was evaded by

noticee resorting to suppression of value, as well as, by resorting to supression of fact, mis-statement, fraud and willful contravention of aforesaid provisions of said Act and Rules as held above. Noticee are also liable for an additional penalty under Section 75A/77 of the said Act for not obtaining registration, not filing periodical returns, as well as, for contravention of aforesaid provisions of said Act And Rules. I determine and confirm a demand of Service Tax (including education cess) amounting to Rs.58,00,063/- (Rupees fifty eight lakhs sixty three only) on M/s Indian Oil Corporation Limited, Barauni Refinery, Begusarai District, Bihar under Section 73(2) of the Finance Act, 1994 as demand vide show cause notice C.No. V(27)I/Pat/SCN-Cell/ST/2005/6003 dated 1.11.2007.

In view of above I order as under:

<u>O R D E R</u>

(a) I determine and confirm a demand of Service Tax (including education cess) amounting to Rs.58,00,063/- (Rupees fifty eight lakhs sixty three only) on M/s Indian Oil Corporation Limited, Barauni Refinery, Begusarai District, Bihar under Section 73(2) of the Finance Act, 1994 as demanded vide Show cause Notice C.No. V(27)I/Pat/SCN-Cell/ST/2005/6003 dated 1.11.2007.

(b) M/s Indian Oil Corporation Limited, Barauni Refinery, Begusarai District, Bihar shall pay the aforesaid amount with interest as per provisions of Section 75 of the Finance Act, 1994.

(c) I impose a penalty on M/s Indian Oil Corporation Limited, Barauni Refinery, Begusarai District, Bihar under Section 76 of the Finance Act,

1994 which shall be calculated at the rate of Rs.200/- (Rupees two hundered only) per day for the period upto 17.04.06 and thereafeter Rs. 200/- per day or @ 2% per month of aforesaid amount short paid by them, whichever is higher, for period starting with the first day after the due date till actual payment of aforesaid amount provided that total amount of penalty under this clause shall not exceed the aforesaid amount of Service Tax and Education Cess short paid by them.

(d) I impose an additional penalty amounting to Rs.1000/- (Rupees one thousand only) on M/s Indian Oil Corporation Limited, Barauni Refinery, Begusarai District, Bihar under section 75A/77 of the Finance Act, 1994.

(e) I impose an additional penalty amounting to Rs.1,16,00,126/- (Rupees one crores sixteen lakhs one hundred and twenty six only) on M/s Indian Oil Corporation Limited, Barauni Refinery, Begusarai District, Bihar under section 78 of Finance Act, 1994."

43. All such aforesaid factual aspects which were taken by learned Commissioner, Patna, completely overlooked by the learned CESTAT, Kolkata while reversing the order and merely on the ground that the entire operation of the transportation of crude oil from Haldia Port to BRPL is covered by a single contract, therefore, the terminal facilities are only intermediate operations of the transportation of the goods through pipeline, which is not convincing to us in view of the

afore-discussed fact as “terminal facility” at Barauni was charged by the IOCL, Barauni Refinery, where nature of service is kind of “store and warehouse”. If it was an integral part of the pipeline facility then, certainly, it should not be charged separately. If MOU creates a provision of a separate charge for “discharge facility” or “terminal facilities” or “storing of crude oil” before entering into next phase of transportation for Bongaigaon Refinery then, it cannot be said the integral part or incidental part of pipeline transportation.

44. Hence, we are convinced enough that the terminal facilities as provided to Bongaigaon refinery is not integral of the pipeline facilities by the respondent rather it is an independent service in the form of **“store and warehousing**”, which is subject to service tax as per provision of Section 65(102) of the Finance Act, 1994.

45. Accordingly, the appeal stands allowed.

46. The order of CESTAT, East Zone, Kolkata dated 26.10.2018 is hereby set aside by affirming/restoring the order of Commissioner, Central Excise & Service Tax, Patna dated 31.08.2009 herewith.

47. In view of aforesaid, the appellant may take appropriate steps/action to recover the service tax along with all

penalties imposed in terms of notice dated 01.11.2007.

(Chandra Shekhar Jha, J.)

Bibek Chaudhuri, J:- I agree.

(Bibek Chaudhuri, J.)

Sanjeet/-

AFR/NAFR	**AFR**
CAV DATE	**23.04.2026**
Uploading Date	**14.05.2026**
Transmission Date	**NA**