

(2022) 05 SHI CK 0026

In the High Court Of Himachal Pradesh

Case No : Central Excise Appeal (CEA) No. 8 Of 2017

M/S Srk Petrochemicals Ltd

APPELLANT

Vs

Commissioner Of Central Excise, Chandigarh

RESPONDENT

Date of Decision : 10-05-2022

Acts Referred:

Citation : (2022) 05 SHI CK 0026

Hon'ble Judges : Tarlok Singh Chauhan, J;Chander Bhusan Barowalia, J

Bench : Division Bench

Advocate : Alok Yadav, Lal Sharma, Vijay Kumar Arora

Final Decision : Dismissed

Judgement

Chander Bhusan Barowalia, J

1. By way of this appeal, the appellant has challenged the final order passed by learned Central Excise & Service Tax Appellate Tribunal (in short 'CESTAT'), Chandigarh in Appeal No. E/733/2008 and E/2561/2007, dated 15.5.2017, whereby the impugned order passed by learned Commissioner (Appeals) was upheld and the appeal filed by the appellant was dismissed.

2. Brief facts necessary for adjudication of the appeal are that appellants are engaged in the manufacture of thinner, falling under Chapter Heading 3814.00 of the Central Excise Tariff Act, 1985 registered under Companies Act, 2013. Appellants, apart from manufacturing thinner, are also engaged in the activity of blending of various mineral oils and selling the same to various industrial consumers or persons engaged in the construction of roads and it is clear that various oils, like furnace oil, mineral turpentine oils are filled in the blending vessel from the underground tanks through GT pipelines. The above materials are rotated/blended in the blending vessel with the help of electric motor for about half an hour to mix the above materials properly and this blended oil is called 'industrial fuel oil' in the trade and industry. It is also averred in the appeal that industrial fuel oil has the same characteristics and chemical properties,

which are contained in the furnace oil and mineral turpentine oil and on blending no chemical reaction takes place, however, minor changes, like improved viscosity is achieved, which is more convenient to use, safe and economical, as compared to furnace oil. Besides this, there is no fundamental difference between the industrial fuel oil, vis-a-vis furnace oil and mineralized turpentine oil. The furnace oil is also an industrial fuel oil and is used in number of industries as fuel. Mixing of turpentine oil in furnace oil dilutes its density and as a result it is capable of being used in a more economic manner.

3. Order-in-Appeal No. 217/CE/CHD/07, dated 28.6.2007, was dismissed by the learned Commissioner (Appeals) after due trial.

4. Feeling aggrieved by the order of learned Commissioner (Appeals), the appellant has preferred an appeal before the learned CESTAT, Chandigarh, whereby the impugned order passed by learned Commissioner (Appeals) was upheld and the appeals filed by present appellant were dismissed.

5. Thereafter, the appellant has maintained the instant appeal before this Court.

6. We have heard M/s. Alok Yadav & Goverdhan Lal Sharma, learned counsel for the appellant and Mr. Vijay Kumar Arora, learned Senior Standing Counsel for the respondent and also gone through the records of the case.

7. Mr. Alok Yadav, learned counsel for the appellant has argued that no manufacturing process is involved and the product is just blend of two oils, which are already taxed by the respondent and the process carried out by the applicant is simple blending and the same cannot be said to be manufacturing of a product and so the order passed by respondent is required to be set aside by allowing the instant appeal. He has further argued that the order passed by learned CESTAT is perverse and arbitrary and the same has been passed without appreciating the facts, which have come on record, and the law is not properly appreciated, therefore, in these circumstances, the appeal be allowed. He has further argued that there is no chemical reaction while blending two oils and it cannot be said to be a manufacturing process. He has further argued that there is no conversion or change of nature of product. He has further argued that the demand notice issued by the respondent is time barred. He has argued that the instant appeal be allowed.

8. On the other hand, Mr. Vijay Kumar Arora, learned Senior Standing Counsel has argued that a plant has been installed by the appellant, there are storage tanks, blending is with the electric motor, and the product is sold with different names by the appellant and making of the new brand is there, thus it is a manufacturing process.

9. To support his argument, Mr. Alok Yadav, learned counsel for the appellant has cited various judgments rendered by Hon'ble Supreme Court viz. Deputy Commissioner Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. PIO Food Packers, decided on 9.5.1980; Commissioner of Central Excise, Meerut Vs.

Goyal Gases (P) Ltd. decided on 3.4.2000; Union of India Vs. J.G. Glass Industries Ltd. decided on 9.12.1997; Servo-Med Industries Pvt. Ltd. Vs. Commissioner of C. Ex., Mumbai decided on 7.5.2015; Satnam Overseas Ltd. Vs. Commissioner of Central Excise, New Delhi decided on 18.3.2015 and Commissioner of C.Ex., Chennai-II Vs. Tarpaulin International decided on 4.8.2010. He has also placed reliance on the decision rendered by CESTAT in case titled as I.O.C. Ltd. Vs. Commissioner of Central Excise, Patna, decided on 24.1.2019.

10. In Servo-Med Industries Pvt. Ltd. Vs. Commissioner of C. Ex., Mumbai, Hon'ble the Supreme Court has held as under:

"xx xx xx 27. The case law discussed above falls into four neat categories.

(1) Where the goods remain exactly the same even after a particular process, there is obviously no manufacture involved. Processes which remove foreign matter from goods complete in themselves and/or processes which clean goods that are complete in themselves fall within this category.

(2) Where the goods remain essentially the same after the particular process, again there can be no manufacture. This is for the reason that the original article continues as such despite the said process and the changes brought about by the said process.

(3) Where the goods are transformed into something different and/or new after a particular process, but the said goods are not marketable. Examples within this group are the Brakes India case and cases where the transformation of goods having a shelf life which is of extremely small duration. In these cases also no manufacture of goods takes place.

(4) Where the goods are transformed into goods which are different and/or new after a particular process, such goods being marketable as such. It is in this category that manufacture of goods can be said to take place. xx xx xx"

11. In support of his arguments, Mr. Arora, learned Senior Standing Counsel has cited judgments rendered by Hon'ble Supreme Court viz. Novopan India Ltd. Hyderabad Vs. Collector of Central Excise and Customs, decided on 14th September, 1994;

Commissioner of Central Excise V. Mahaan Dairies, decided on 17.2.2004 and Commissioner of Central Excise, Chandigarh Vs. M/s Doaba Steel Rolling Mills, decided on 6.7.2011.

12. The case of the appellant is that there are two ingredients for manufacturing the thinner/industrial oil. The product of the appellant is just a blend of two oils and has nothing to do with the manufacturing of new product, as only the viscosity of the final product is reduced. This Court while taking into consideration the manufacturing process, comes to the conclusion that there are three ingredients, which are (a) two oils as raw-material are used; (b) blending

is there with the electric motor and (c) process is carried out for reducing the viscosity of the final product. The final product is sold in a different name.

13. Applying the above law, as held by the Hon'ble Supreme Court to the facts of the present case, it is clear that (1) two oils are used for the manufacturing the produce (2) Oils are mixed with the electric motor (3) by mixing the oils the viscosity is reduced (4) the final product is used as industrial oil (5) the final product is sold with a different name and brand, so the goods are transformed into other goods, which are different and/or new after electric process, after reducing the viscosity, the use is also changed for the industrial process, marketed with different name(s) and in these circumstances, there is no other conclusion except that the appellant is carrying manufacturing process.

14. The detailed discussion herein above makes it amply clear that the appellant has made substantial expansion of their plant and machinery to the extent of 25% or more which is the basic requirement of exemption under notification No. 50/2003-CE, dated 10.6.2003, the appellant has carried out the manufacturing activities in the plant. So, it is concluded that M/s SRK Petrochemicals Ltd. are engaged in the manufacture of Thinner and Industrial Fuel Oil.

15. As far as the limitation is concerned, the demand is raised well in time by the respondent and the appellant cannot deny the payment of his legal dues towards the respondents. The law as cited by learned counsel for the appellant is not applicable to the facts of the present case, as those judgments are totally on the different aspects and facts are also totally different. In these circumstances, this Court finds that the judgment passed by the learned Appellate Authority below, upholding the order passed by the authorities below is just reasoned after appreciating the facts which have come on record to its true perspective and the same needs no interference as the same is as per law.

16. The net result of the above discussion is that reducing the viscosity of two oils by electric process is nothing but manufacturing and the further act of selling the same with a new name and brand is also an additional ingredient to conclude that the appellant is doing the manufacturing process. In these circumstances, the order passed by learned CESTAT needs no interference and the same is upheld. 17. Accordingly, in view of the observations and analysis, made herein above, there is no merit in the appeal and the same is dismissed. Leaving the parties to bear their own costs.

18. Pending miscellaneous applications, if any, also stand disposed of.