(18)

DB
D

# CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
## WEST ZONAL BENCH, AHMEDABAD

O-20, Meghani Nagar, New Mental Hospital Compound Ahmedabad – 380 016
Tel. : 079-22683202 Fax No. 079-22683276

File No. E/2788 & 2789/04 (352)  Date 12.02.09

From : THE ASSISTANT REGISTRAR, CESTAT, AHMEDABAD

To. (i) N. I. Bhuva.
(ii) Indu Nissan Oxo Chem. Inds Ltd.
Behind GSFC Complex.
Baroda - Bajuwa. Dist. Vadodara.

विभागीय प्रतिनिधि कार्यालय
23 FEB 2009
अहमदाबाद

In the matter of : (i) Indu Nissan Oxo Chem Inds Ltd Appellant
(ii) N. I. Bhuva.

V/S

C.C. Ex. Vadodara-I Respondent

I am directed to transmit herewith a certified copy of Order No. A/418 & 419/WZB/AHD/2009 dated 25.11.08 / 12.02.09 Passed by the Tribunal under Section 35(1) of the Central Excise Act, 1944, Section 129 (B) of the Customs Act, 1962 and Finance Act, 1944.

Assistant Registrar

Copy to :-

1. Respondent
C.C.Ex.
Vadodara-I

2. Advocate /Consultant
Arun H. Mehta.
3 A-B Lentin Chambers. 4th Flr.
36. Dalal Street Fort.
Mum. 400001.

3. Chief Commissioner, C.Excise/Customs: ~~Ahmedabad~~ / Vadodara
4. Comm. C.Ex. / Customs (Appeals) Vadodara-I
5. Jt. C.D.R. CESTAT, Ahmedabad
6. ~~Central Library, CESTAT, New Delhi~~
7. CESTAT Bar Association, New Delhi
8. CESTAT Bar Association, Ahmedabad
9. Master File
10. M/s.Commercial Laws of India Pvt Ltd
11. Centax Publication (P) Ltd
12. Deeparchie Publication.
13. M/s.Taxmann Allied Service Pvt Ltd
14. M/s.Raghuraman's
15. M/s.Excise & Customs cases
16. Tax India Online Ltd.
17. Easy Service Tax Online Dot Com P. Ltd.

Assistant Registrar

# CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
## West Zonal Bench, Ahmedabad

**COURT : II**

Appeal No. : **E/2788 and 2789 of 2004**

Arising out of : OIA No. Commr.(A)/163 & 164/VDR-I/2004 Dated 28.6.2004

Passed by : Commr. (A) C.Ex. & Cus. Vadodara-I

For approval and signature :

**Hon'ble Mrs. Archana Wadhwa, Member (Judicial)**
**Hon'ble Mr. B.S.V. Murthy, Member (Technical)**

| | | |
|---|---|---|
| 1 | Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | No |
| 2 | Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | No |
| 3 | Whether their Lordships wish to see the fair copy of the Order? | Seen |
| 4 | Whether Order is to be circulated to the Departmental authorities? | Yes |

**Appellant (s)** : **M/s. Indu Nissan Oxo Chemical Indus. Ltd**
**Shri Narendra I. Bhuva**

Represented by : Shri Arun H. Mehta, Adv.

**Respondent (s) :** **CCE, Vadodara-1**

Represented by : Shri D.S. Negi, SDR

**CORAM :**

**Hon'ble Mrs. Archana Wadhwa, Member (Judicial)**
**Hon'ble Mr. B.S.V. Murthy, Member (Technical)**

Date of Hearing : 25.11.2008

Date of Decision : 12/02/2009

ORDER No. A/418 to 419/WZB/AHD/2008

**Per : B.S.V. Murthy, Member (Technical)**

The issue involved in this case is classification of Iso Heptane. The manufacture process as given by the appellants in their classification declaration is as under :-

*"Iso-Heptane is manufactured during the process of distillation of Crude Alcohol as a by product. Crude Alcohol is distilled to produced pure Alcohol consists of mainly light Hydrocarbons i.e. Iso Heptane and Oxo Alcohol & heavy polymer. The hydro carbon is removed in the first distillation column, while heavy polymer is removed in the second column to produce pure alcohol, that in the declaration for the input file by M/s. INOIL, Iso – Haptane was manufactured only during the manufacture of Iso- Octanol, the critical inputs used in the manufacture of Iso-heptane, as declared by the unit was Heptane, which was shown as provisionally assessed under chapter heading 2710; in the classification declaration filed by the assessee under erstwhile Rule 173B of the Central Excise Rules, 1944, M/s. INOIL had classified their final product i.e. Iso-heptane under chapter sub-heading 2901.90 of the schedule of the Central Excise Act, 1985."*

2.1 The appellants have classified it under CETH SH 2901.10, of the first schedule of the CETA and the Revenue's contention is that the same should have been classified under 2710.19, which covers Motor Spirits. The basis for the contention of the Revenue is the statement by M/s. Reliance Petroleum Ltd. who had purchased the product from the appellants during the disputed period and according to which the properties of Iso- Heptane were as under :-

| | |
|---|---|
| *Appearance* | *Clear* |
| *Specific Gravity 20C/42* | *0.7020* |
| *Colour APHA* | *10* |
| *Antioxidant (Conc)* | *NIL* |
| *Peroxide Value (ppm)* | *<0.10* |
| *Distillation C (ASTM)* | |
| *IBP* | *88°C* |
| *5* | *90°C* |

| | |
|---|---|
| 10 | 92°C |
| 20 | 93°C |
| 40 | 94°C |
| 50 | 94.5°C |
| 60 | 96°C |
| 70 | 97.5°C |
| 80 | 102°C |
| 90 | 111°C |
| 95 | 134°C |
| DP | 16 |
| Recover % | 97 |
| H20% | 0.031 |
| Chloride as CL ppm | Nil |
| Total oxygenates Mg KOH/gram | 1.29 |
| Acid Value Mg KOH/gram | 0.785 |
| Ester value Mg KOH/gram | 0.617 |
| G.C% | |
| Flash Point | <0.10 |

## 2.2 Revenue has also contended further :

*Scrutiny of scope of Chapter Heding 2710 further reveals that mandatory condition for products i.e. Petroleum Oils to be classifiable unde Chapter sub-heading 2710.11 to Chapter sub heading 2710.19 of the Central Excise Tariff Act, 1985.*

*(i) This chapter sub-headings covers only those petroleum oils which are other known as "Motor Spirits"*

*(ii) The term "Motor Spirit" has been defined in the Tariff itself as –*

*- Any Hydrocarbon oil (excluding Crude mineral oil) which has Flash point below 25°C.*

*- Which either by itself or in admixture with any substance is suitable for use.*

*Under this category, in the Tariff the various 'Petroleum Oils' mentioned are given below:*

***Chapter sub-heading***

*(a) 2710.11 – Special Boiling Spirits (other than Benzene, Toluol) with nominal boiling point range 35 to 116°C.*

*(b) 2710.12 – Special Boiling Point Spirits (other than Benzene Benzol, Toluene, Toluol) with nominal boiling point range 63 to 70°C.*

*(c) 2710.13 – Special Boiling Point Spirits (other than Benzene, Benzol, Toluene, Toluol).*

*(d) 2710.14 – Naphtha*

*(e) 2710.15 – Natural Gasoline (liquid)*

*(f) 2710.19 – Others*

Accordingly, Revenue came to the conclusion that the product Iso-heptane cleared by the appellant satisfies the conditions for classification of the same under chapter 2710.00. The Revenue also relied upon the statement of customer, Reliance Petroleum to show that the product was being used by them to mix with motor spirit, popularly known as petrol for used as fuel in spark ignition engine.

3. On the above basis, a show cause notice was issued demanding differential duty on Iso Heptane cleared during the period from Jun 2002 to Nov 2002 and the show cause notice was served on the appellant on 12..8.2002. The adjudication and appellate process have resulted in confirming of classification of the product under heading 2710.19 of the first schedule of Central Excise Tariff Act, 1985, demand for differential duty of Rs. 17,11,522/- with interest and equal amount as penalty on the appellant Company and penalty of Rs. 50,000/- on Shri Narendra I. Bhuva. Hence the appeal.

4. Heard both the sides. Ld Adv. on behalf of the appellants submitted that the classification proposed is not correct and product manufactured is nothing but a chemical. The Revenue's contention is based on flash point and end-use, both of which are not relevant. He also relied upon the report of the Central Excise laboratory which described the product being color less and it is an organic chemical i.e. Acyclic Hydro Carbon. However, he also submits that extended period could not have been invoked since the manufacturing process explained in the show cause notice is based on the classification list; the appellants have submitted RT-12 returns regularly and in all the documents, the description of the product was Iso Heptane only.

Therefore, suppression of facts could not have been alleged in this case.

5. Ld. DR relies on the Commissioner (Appeals) wherein the Revenue had relied on end-use and laboratory report as submitted by the Reliance Petroleum Ltd. for the purpose of classification. He also submitted that suppression has been rightly invoked in view of the fact that the appellant never disclosed the fact that flash point of the product is less than 25°c and end use was also not reported.

6. The chapter notes with regards to heading 2710 indicate that chapter sub heading cover only those petroleum oils which are otherwise known as " Motor spirits" and the term Motor Spirit has been defined in the tariff as Any Hydro Carbon oil (excluding crude mineral oil) which has flash point below 25°c and which either by itself or in admixture with other substance is suitable for use as a fuel in spark ignition engine. In view of the chapter notes and the laboratory reports of the purchaser Reliance Petroleum which has not been contradicted and also reported end use as indicated, we cannot find fault with the classification arrived at by the Revenue and confirmed. However, as regards suitability for use as fuel for internal combuston engines, Ld. Advocate relied upon the decision of the Tribunal in the case India Nissan Oxo Chemical Indus. Ltd. reported in 1998(101).ELT.201 (Tri.) but we find that the same is not applicable on facts. In that case department had not been able to show any evidence of the end use, where as in this case the purchaser has clearly indicated the end use. Therefore, on the chemical parameters as well as end use parameters the product satisfies the conditions required for classification under

Chapter 2710 and therefore classification arrived at by Revenue is upheld.

7. Demand has been confirmed by invoking extended period. There is no dispute that the manufacture process had been correctly described by the appellant while submitting classification list. Further it is not the contention of the Revenue that the product was not described correctly. Legally there was no requirement for the appellants to submit the laboratory report for each and every product manufactured by them and Revenue has the option to get the same tested by their own laboratory which we find in this case has not been done. The appellants have relied upon chemical test done in 1991 which shows that product has been tested by the Revenue Central Laboratory. Taking all these factors into account we cannot agree that it was a mis-declaration or suppression of facts to attract extended period under Section 11A for demanding differential duty. In this case demand relates to period from June 2000 to Nov 2000 and show cause notice was issued on 06.8.2002. Hence show cause notice is time barred. Therefore, on limitation, we set aside the impugned order and allow the appeals with consequential relief to the appellants.

***(Pronounced in the Court on ___ Jan 2009)***

Sd/-

**(Archana Wadhwa)**
Member (Judicial)

**(B.S.V. Murthy)** 27/1/09
Member (Technical)

...KL

**Per : Archana Wadhwa, Member (Judicial)**

8. After going through the order proposed by my learned brother Member (Technical), I find that the appeal has been allowed in Toto on the point of limitation itself. I concur with the same. However, I make it clear that the merits of the case as regards classification do not stand considered by me and the same would be dealt in future at appropriate occasion.

Sd/-

**(Archana Wadhwa)**
**Member (Judicial)**

Pronounced on 12-2-09.
12/2/09

jk

Customs, Excise & Service Tax Appellate Tribunal

12 FEB 2009