

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Excise Appeal No.10191 of 2021

(Arising out of OIO-RAJ-EXCUS-000-COM-05-20-21 dated 19/11/2020 passed by Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

RELIANCE INDUSTRIES LTD

.....Appellant

Village Meghpar Padana Motikhavdi Tal Lalpur
Jamnagar
Jamnagar, Gujarat

VERSUS

C.C.E. & S.T.-RAJKOT

.....Respondent

Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

APPEARANCE:

Shri Vipin Jain & Ms. Dimple Gohil, Advocates for the Appellant
Shri S.N. Gohil, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
 HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. A/ 12472 /2021

DATE OF HEARING: 07.07.2021
DATE OF DECISION: 28.10.2021

RAMESH NAIR

The brief facts of the case are that the appellant are engaged in the manufacture of Motor spirit falling under Central Excise Tariff Heading 27.10 at its refinery in Jamnagar. The said motor spirit was being cleared as such or after addition of 5% duty paid ethanol in the later situation 5% duty paid ethanol and 95% manufactured motor spirit are cleared by loading into road tankers by two separate pipelines in the refinery. The motor spirit is blended with Ethanol for the purpose of reducing Carbon Monoxide and consequent air pollution. The ethanol blended motor spirit (EBMS) was being cleared by the appellant to comply with requirement laid down by the Ministry of Petroleum and Natural Gas. The appellant paid the duty at the time of removal of ethanol blended motor spirit on its clearance value. The appellant was issued a Show Cause Notice dated 09.06.05 wherein, it was alleged that the process of blending ethanol with motor spirit amounts to manufacture as:

- (a) Notification No.63/2003-CE specifically exempted EBMS from excise duty and that there was no exemption on EBMS for the period 01.07.2004 to 07.08.2004.
- (b) Circular F.No.366/5/2002-TRU dated 02.01.2003 uses the word manufacture for the process of blending 5% ethanol with 95% motor spirit to produce EBMS.

1.1 Further, that unblended motor spirit had been used captively by appellant to manufacture a new product namely EBMS. The benefit of captive consumption under Notification No. 67/95-CE dated 16.03.1995 was not available to motor spirit. Accordingly, it was proposed to demand excise duty on the motor spirit which was subsequently cleared as Ethanol blended motor spirit on payment of duty. The Show Cause Notice was adjudicated vide Order-In-Original dated 24.02.2006 whereby, the demand of excise duty was confirmed along with interest and penalty. The appellant being aggrieved by the said Order dated 24.02.2006 filed an appeal No. E/1758/06 before this tribunal which remanded the matter back with a direction to the original Adjudicating Authority to examine the effect of the notification No. 25/2006-CE dated 20.11.06 and also to decide the issue of manufacture in light of the CBEC Circular dated 13.12.94. The adjudicating authority, however, vide order dated 2.11.2010 once again confirmed the demand of duty along with interest and penalty primarily by placing reliance on a draft circular F.No.84/04/2007-CX hosted on website of CBEC in November, 2007 which purported to withdraw the CBEC Circular of 13.12.94 by stating that the process of mixing additives in normal petrol/diesel results in the emergence of new product having a distinct name, character and uses and should amount to manufacture. The appellant filed an appeal No. E/286/2011 before this tribunal in second round, the tribunal remanded the matter back to the original adjudicating authority for fresh consideration on the ground that reliance placed by the adjudicating authority on the draft circular hosted on CBEC website in 2007 which was never issued was not sustainable. This tribunal also observed that as the above circular was not issue therefore, circular no. 83/83/94-CX dated 13.12.94 issued by the board which held that blending of Ethanol with motor spirit does not amount to manufacture continued to be valid. The adjudicating authority however, vide the impugned order dated 19.11.20 once again confirmed the demand of duty along with interest and penalty. The impugned order contended that the factum of manufacture of EBMS further, emerged from the exemption notification No.62/2002-CE, 63/2002-CE, 64/2002-CE all dated 31.12.2002.

1.2 As regard the notification No.25/2006-CE (NT) dated 20.11.2006 issued in exercise of the power under Section 11C is concerned, it held that as the notification exempted EBMS from payment of Central Excise Duty for the period from 01.07.2004 to 03.08.2004, it is clear that the EBMS has been considered as an excisable/dutiable and manufacture product under the provision of Central Excise Act, 1944.

02. Shri Vipin Jain, learned counsel along with Ms. Dimple Gohil, Advocate appearing on behalf of the appellant submits that the respondent has wrongly considered the issue before him as Central Excise duty is required to be paid on motor spirit since, the motor spirit is used captively in the manufacture of EBMS. He submits that the process of blending 5% ethanol with 95% motor spirit to produce EBMS does not amount to manufacture therefore, when the appellant have paid the duty on the higher value i.e. on the value of EBMS, no duty can be demanded on the unblended motor spirit. He submits that there is no difference in the motor spirit and EBMS as both are treated as motor spirit and falling under the same CETH 27.10 and both conform to BIS Specification i.e. BIS specifications 2796 for motor spirit. He submits that this is the third round of appeal. In the same case earlier the hon'ble Tribunal remanded the matter. However, the impugned order has travelled beyond the scope of such remand by stating that CBEC Circular dated 13.12.19 refers to methanol whereas, the product in question in the present case was ethanol. He failed to appreciate that the said circular was considered by the Hon'ble Tribunal as well and found to be relevant therefore, it was beyond the scope of remand for the respondent to consider and adjudicate upon the applicability or otherwise of the said circular. He further submits that the mere fact an exemption notification existed (albeit for another period) for EBMS cannot be itself mean that the process of blending of ethanol with motor spirit tantamounts to manufacture.

2.1 It is a settled law that merely because a product is appearing in the tariff or in an exemption notification that itself is not sufficient to hold that it is the result of the process of manufacture. In this regard he placed reliance on the following judgments:

- UOI v AHMEDABAD ELECTRICITY- 2003 (158) ELT 3(SC)
- NEW SHORROCK MILLS v CCE- 2005 (190) ELT 35

2.2 He submits that the respondent has neither produced nor relied upon any evidence to establish that the process of blending motor spirit and ethanol tantamounts to process of manufacture and hence therefore, failed

to discharge the burden of proof. He submits that the question whether process amounts to manufacture or not has to be decided by applying tests laid down by the hon'ble Supreme Court in the case of J.G. Glass Industries- 1998 (97) ELT 5 (SC). Since the said tests were not satisfied in as much as unblended motor spirit as well as EBMS answer to the description of the motor spirit under Tariff Heading 27.10 and both are used commercially for the same purpose therefore, the blending of motor spirit with ethanol does not lead to the manufacture of a new product with different characteristics or commercial use. As regard the issue that mere blending of motor spirit with small quantities of additives to improve the quality of motor spirit and reduce emission levels does not amount of manufacture since even after addition, motor spirit continues to be used as motor spirit. He placed reliance on the following judgments:-

- HINDUSTAN PETROLEUM CORPORATION v. CCE- 2009 (234) ELT 648
- I.O.C.L. v. CCE, PATNA- 2019 (368) ELT 146 (Tri.-Kolkata)
- BHARAT PETROLEUM CORPORATION LTD. V CCE, PATNA- 2013 (295) ELT 106 (Tri-Kol)
- HINDUSTAN PETROLEUM CORPORATION LTD. V CCE- 2015 (319) ELT 133 (Tri.-Del.)
- BHARAT PETROLEUM CORPORATION LTD. V. CCE- 2018 (361) ELT 950 (Tri.-Chan.)
- BHARAT PETROLEUM CORPIORATION LTD. V. CCE- 2019 (366) ELT 903 (Tri.-Kol)

2.3 He further submits that the respondent has not correctly appreciated the effect of the notification No.25/2006-CX dated 20.11.2006 notified under Section 11C of the Central Excise Act, 1944, vide which it was directed that no duty was payable on EBMS for the period 1.7.2004 to 3.8.2004 if duty had been paid on motor spirit and ethanol. It is evident from this notification that the government has accepted that duty is not required to be paid at both the stages i.e. Prior to and after addition of ethanol but only at one stage. As the appellant had already paid higher duty amount of 3,97,68,000/- on EBMS, it could not have been called upon to pay excise duty on motor spirit prior to blending of ethanol. He referred to CBEC Circular No. 1078/02/2021-CX dated 22.06.2021 which has clarified that if duty is paid on 5% ethanol and 95% motor spirit then on clearance of EBMS no duty is to be collected and the product need not suffer duty again and is exempted from various duties of excise. Reliance was placed on the case of Commissioner of Central Excise, Rohtak vs. Indian Oil Corporation Ltd- 2015

(321) E.L.T. 571 (P & H), where Hon'ble High Court held that once duty was paid on motor spirit, assessee was entitled to exemption on EBMS. The purpose of exemption notification was to prevent payment of duty on 5% ethanol at both the stages by the assessee. He submits that the respondent has erroneously relied on the Circular F.No. 356/5/2002-TRU dated 02.01.2003 to allege that blending 5% ethanol with 95% motor spirit amounts to manufacture. Circular dated 02.01.2003 does not specifically provide that blending 5% ethanol with 95% motor spirit amounts to manufacture. The said circular only clarifies that 5% ethanol blended petrol is exempted from various excise duties as notified by the government and that there is a concession for motor spirit used in EBMS.

2.4 On the other hand, the CBEC Circular No.83/83/94-CX dated 13.12.1994 specifically clarified that addition of methanol to motor spirit does not amount to manufacture. The respondent has disregarded the said circular which is otherwise binding on him unless and until the view is taken by the Superior Court in which case the view of court is to be followed. He placed reliance on the Hon'ble Supreme Court judgment in the case of RATAN MELTING AND WIRE INDUSTRIES v. CCE- 2008 (231) ELT 22 (S.C.).

2.5 As regard the issue of manufacture has to be decided in terms of Section 2(f) of Central Excise Act, 1944 and not inferred from exemption notification, he placed reliance on the judgments on:-

- COMMISSIONER OF CENTRAL EXCISE, KERALA vs. LARSEN & TOUBRO LTD- 2015 (39) STR 913 (S.C.)
- UNION OF INDIA v S.SRINIVASAN- (2012) 7 SCC 683
- STATE OF KARNATAKA v. H. GANESH KAMATH- (1983) 2 SCC 402

Wherein, it was held that a rule which is a form of delegated legislature cannot travel beyond the scope of parent act. He submits that the respondent has erred in placing reliance on the language of the letter dated 25th March, 2003 addressed by the appellant to the department in which they had purportedly accepted manufacture of EBMS. He submits that whether a process amounts to manufacture or not can be determined only in terms of Section 2(f) of the Central Excise Act, 1944. On the basis of the facts of the case and the tests laid down by the hon'ble Supreme Court in its various judgments. A statement made in a letter cannot be conclusive as to whether the process amounts to manufacture or not.

2.6 He submits that the respondent erred in referring to Notification No.67/95-CE which grants exemption to intermediate goods used captively in the production of excisable goods. He submits that motor spirit could not by any means be considered to be intermediate goods and therefore, the question of motor spirit not being exempted in terms of the above notification did not arise. The respondent ought to have appreciated that EBMS was nothing but motor spirit albeit with Ethanol blended in it. The appellant has consciously chosen to pay duty at a later stage mainly after blending ethanol in the motor spirit on the higher value with a view to comply with the law as laid down by the Hon'ble Supreme Court inter alia in the judgments of JG GLASS (supra) & SIDDHARTHA TUBES LTD. v CCE-2000 (115) ELT 32 (SC)

2.7 In view of the above submission, appellant submits that the impugned order be set aside.

03. Shri S.N.Gohil, learned Superintendent (Authorized Representative) appearing on behalf of the revenue reiterates the finding of the impugned order.

04. We have carefully considered the submissions made by both the sides and perused the records. The issue to be decided by us in this appeal is that when the appellant paid the duty on ethanol blended motor spirit on its value of clearance that whether the activity of blending of motor spirit with ethanol is amount to manufacture or otherwise and whether the appellant once again required to pay duty on motor spirit unblended. We find that even after blending of 5% ethanol with 95% motor spirit, the product EBMS remains motor spirit as per the chemical nature of product as well as use thereof. It is also the fact that whether it is a unblended motor spirit or ethanol blended motor spirit, both falls under same BIS specification 2796, it is also established that whether it is unblended or blended product fall under the same class. There is no different product arise only by activity of blending with 5% ethanol, the relevant para in the IS 2796-2000 is reproduced below:-

4. REQUIREMENTS

4.1 General

The material shall be a refined petroleum distillate free from undissolved water, foreign metal and other visible impurities. It may also contain 5 percent (v/v) Max anhydrous (99.5% v/v) denatured ethanol (conforming to IS) apart from suitable

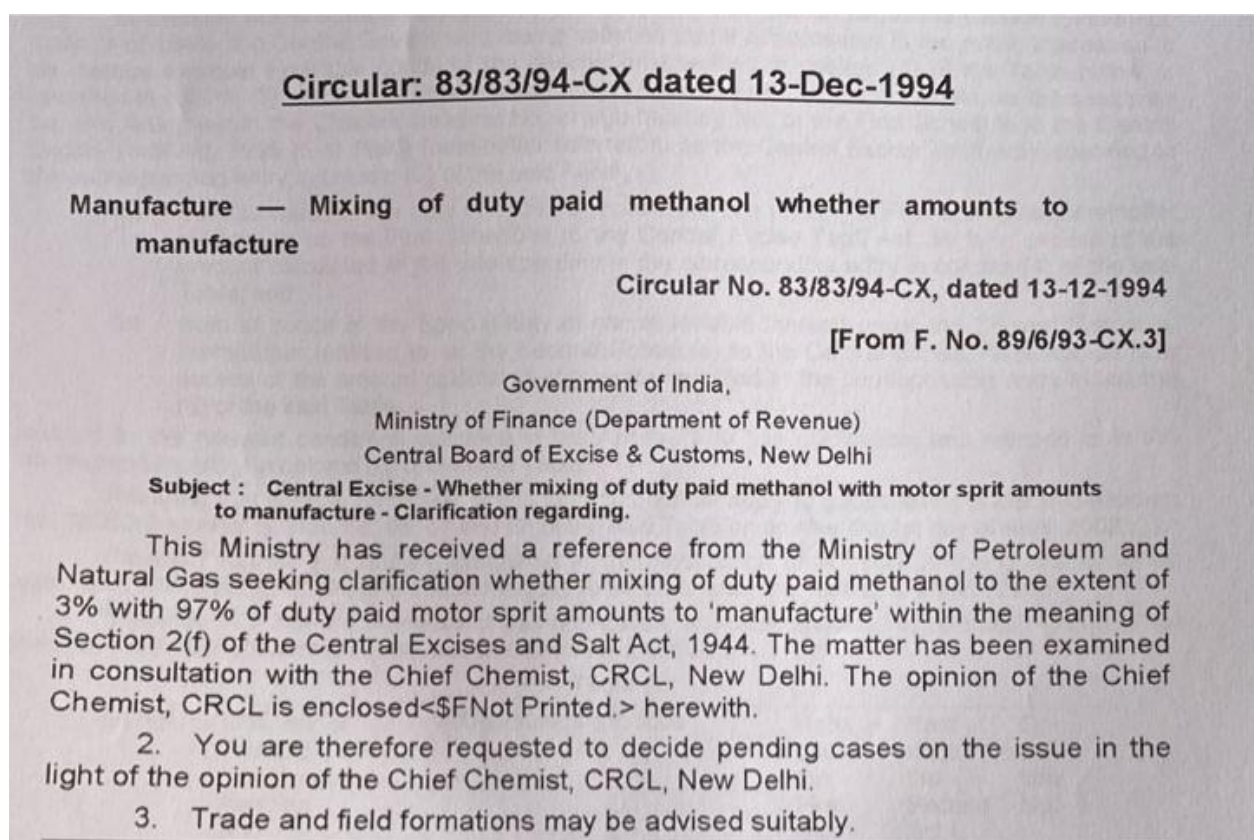
additives (see 4.1.1. to 4.1.4) in appropriate concentration to improve the quality of gasoline.

In view of the above clause of IS 2796-2000, it is abundantly clear that the motor spirit will remain motor spirit even if, ethanol is also contained in such motor spirit.

4.1 This tribunal in the last remand order dated 28.11.19 remanded the matter by giving the following finding:-

"7. We have carefully considered the submission made by both the sides and perused the records. We find that among other findings the Learned Adjudicating Authority has heavily relied upon the Draft circular F. No.83/04/2007-CX which intended to withdraw the Circular No.83/83/94-CX dated 13.12.1994 which circular was heavily relied upon by the appellant. In this regard we are of the view that the draft circular which was never issued as a circular should be completely ignored and no reference can be drawn from such circular. Since the draft circular was not issued the circular No. 83/83/94-CX dated 13.12.1994 was continued and effective. Therefore, the finding of the Learned Adjudicating Authority based on the draft circular is not sustainable. In this situation we are of the view that the entire matter needs to be given a relook by considering the various alternative submission made by the appellant"

From the above order, it was made clear that the circular 83/83/94-CX dated 13.12.1994 was continued and effective. The said circular is reproduced below:-



In the above circular it was clarified that mixing of duty paid methanol with motor spirit whether it amounts to manufacture or otherwise within the meaning of section 2(f). The Chief Chemist, CRCL, New Delhi's opinion to be followed. The said opinion is extracted below:-

"In the instant case it is stated that methanol is blended product conforms to the BIS specifications prescribed for motor spirit. This process involves only simple blending and no new product having different properties, characteristics, or use emerges; thus mixing 3% methanol in motor spirit, which does not cease to be motor spirit after mixing 3% methanol, in my opinion, will not amount to "manufacture" as envisaged in section 2(f) of the Central Excise and Salt Act, 1944."

4.2 In view of the above opinion, it is clear that blending of ethanol with 95% motor spirit does not amount to manufacture as envisaged in section 2(f) of Central Excise Act, 1944. The contention of the adjudicating authority that the circular mention about methanol not ethanol, we find no difference whether it is methanol or ethanol since the property of both are same and the purpose of mixing is also same which is evident from the above Para 4.1 of IS 2796-2000. The only issue is that whether the blending of either ethanol or methanol with motor spirit amount to manufacture. This is abundantly made clear as per the above opinion of the chemical examiner and the same was accepted by the Central Board of Excise & Customs. Therefore, this circular being binding on the adjudicating authority should have scrupulously followed the same and ought not to have been held that blending of ethanol with motor spirit is amount to manufacture. The identical issue has been considered in the following judgments:-

- HINDUSTAN PETROLEUM CORPORATION v. CCE; 2009 (234) ELT 648

It was held that mere blending of motor spirit with small quantities of additives to improve the quality of motor spirit and to reduce emission levels does not amount to manufacture. Since even after addition motor spirit continues to be used as motor spirit.

In the case of I.O.C.L. v. CCE, Patna; 2019 (368) ELT 146, this tribunal following the aforesaid judgment of HINDUSTAN PETROLEUM CORPORATION LTD. passed the following order:-

6. *I find that the issue is no more res integra in view of the Tribunal's decision in Hindustan Petroleum Corporation Ltd. v. CCE, Delhi & Rohtak reported in [2009 \(234\) E.L.T. 648](#) whereby the Tribunal, has held that a*

process or treatment to enhance the marketability of a product or to improve the value addition does not amount to manufacture. The relevant paragraphs of the said decision are reproduced below :-

"4. We have carefully considered the submissions from both the sides. The appellants bring duty paid MS and HSD to their Depots/Installations where a part of such MS/HSD is blended with MFAs and sold as branded MS/branded HSD under brand names like "Speed", "Power", "Turbojet" etc. The branded MS/HSD are claimed by the Appellants to increase the engine efficiency by reducing the formation of carbon deposits and accordingly are sold at a premium. The point of dispute in this group of appeals is as to whether the process of blending ordinary MS/HSD with very small quantity of MFAs (0.04% to 0.06%), to make branded MS/HSD amounts to manufacture. After considering the rival contentions on this point, we, for the reasons to given below, hold that this process does not amount to 'manufacture' and hence would not attract any central excise duty.

4.1 The MS and HSD after being blended with small quantity of MFAs remain MS and HSD only, conforming to ISI specifications IS : 2796-2000 and IS : 2000 respectively. Just because blending improves their quality and after blending they are sold under different brand names like 'Speed', 'Power', 'Turbojet' etc. they do not become products different from unblended MS/HSD, with different characteristics and usages. Their characteristics remain the same, as they both have to conform to the ISI specification for unblended MS/HSD and their usage also remain the same. Hon'ble Supreme Court in its judgment in case of CCE v. Sudarshan Chemical Industries (supra) and this Tribunal in its judgments in cases of Lakme Lever Ltd. v. CCE (supra) and CCE v. Mysore Ammonia Pvt. Ltd. (supra) has held that a process or treatment to enhance the marketability of a product or improve the value addition does not amount to manufacture. In this case, the blending only improves the quality of the MS/HSD resulting in better value addition, without charging the basic characteristics and usages of the products."

In the case of BHARAT PETROLEUM CORPORATION LTD. v. CCE, PATNA; 2013 (295) ELT 106 (Tri-Kol)

5.1 *Heard both sides and perused the records. The Appellant are receiving duty-paid Motor Spirit (MS) at their warehouses after 1-9-2004 and they blend/mix the same with Multi-functional Additives (MFA) and the resultant product is called as 'speed'. The said resultant product is cleared to their distributors/depots without payment of duty. It is the case of the Revenue that on blending the MS with MFA, the resultant product i.e. 'speed' becomes dutiable as the process of blending/mixing of MS with MFA falls within the meaning and scope of manufacture as defined under Section 2(f)(i) of the Central Excise Act, 1944. On the other hand, the submission of the Appellant is that the duty paid MS and MS speed are one and the same, and there is no change in basic characteristics, usages and specifications on blending MS with MFA hence the process of mixing/blending does not result into manufacture as defined under Section 2(f) of CEA, 1944 and accordingly MS speed is not exigible to duty again. We find that similar issue on identical facts wherein the Appellant was also a party relating to their other unit, came before the Co-ordinate Bench of this Tribunal in the case of Hindustan Petroleum Corporation Ltd. v. CCE, Delhi & Rohtak reported in [2009 \(234\) E.L.T. 648](#). After considering at length the arguments advanced*

from both sides, almost on similar lines presented before us, the Tribunal has come to the conclusion that the process of mixing duty-paid MS with MFA does not result into a new produce and hence the process of blending/mixing of MS with MFA is not a process of 'manufacture' as defined under Section 2(f) of the Central Excise Act, 1944. The finding of the Bench is recorded at para 4.1 as follows :

"4.1 The MS and HSD after being blended with small quantity of MFAs remain MS and HSD only, conforming to ISI specifications IS : 2796 - 2000 and IS : 1460 - 2000 respectively. Just because blending improves their quality and after blending they are sold under different brand names like 'Speed', 'Power', 'Turbojet' etc. they do not become products different from unblended MS/HSD, with different characteristics and usages. Their characteristics remain the same, as they both have to conform to the ISI specification for unblended MS/HSD and their usage also remain the same. Hon'ble Supreme Court in its judgment in case of CCE v. Sudarshan Chemical Industries (supra) and this Tribunal in its judgments in cases of Lakme Lever Ltd. v. CCE (supra) and CCE v. Mysore Ammonia Pvt. Ltd. (supra) has held that a process or treatment to enhance the marketability of a product or improve the value addition does not amount to manufacture. In this case, the blending only improves the quality of the MS/HSD resulting in better value addition, without charging the basic characteristics and usages of the products."

5.2 Besides applying the principles laid down on the subject by the Hon'ble Supreme Court in a series of judgments in the cases of - (i) *South Bihar Sugar Mill v. UOI* reported in [1978 \(2\) E.L.T. J336](#) (S.C.); (ii) *UOI v. Delhi Cloth Mills Ltd.* reported in [1977 \(1\) E.L.T. J199](#) (S.C.); and (iii) *Tega India Ltd. v. CCE* reported in [2004 \(164\) E.L.T. 390](#) (S.C.), the Bench has held that the conditions to convert a process into manufacture are not satisfied in the present case, as no new and different article with distinct name, characteristics and usages emerge. It is observed as :

"4.3This criteria of manufacture is not satisfied in this case as, as mentioned above, the MS and the HSD after blending with MFA remain MS and HSD only and except for a brand name being added to their names, there is no change in their basic characteristics and usages. As mentioned above, there is no separate ISI specification for branded MS or branded HSD and both branded as well as unbranded MS/HSD have to conform to the same ISI specifications. Similarly, there is no change in their use. Thus applying the above-mentioned criteria laid down by the Hon'ble Supreme Court as to what constitutes manufacture, the process of blending ordinary MS or HSD with MFA to make branded MS or branded HSD, does not amount to manufacture."

5.3 Learned A.R. appearing for the Revenue argued that the observations of the Tribunal in the HPCL case (supra) is not binding on the Tribunal in view of the ratio of the Hon'ble Supreme Court in *West Coast Paper Mills Ltd. (supra)*. Countering the said argument, learned Advocate appearing for the Appellant referred to the judgment of the Hon'ble Supreme Court in the case of *Kunhayammedv. State of Kerala (supra)*, specifically drew our attention to para 14(4) of the cited judgment which reads as under :

"14. ...In our opinion, the legal position which emerges is as under :

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3.

4. *In spite of a petition for special leave to appeal having been filed, the judgment, decree or order against which leave to appeal has been sought for, continues to be final, effective and binding as between the parties. Once leave to appeal has been granted, the finality of the judgment, decree or order appealed against is put in jeopardy though it continues to be binding and effective between the parties unless it is a nullity or unless the Court may pass a specific order staying or suspending the operation or execution of the judgment, decree or order under challenge."*

5.4 We do not find any reason or necessity to enter into the said controversy of whether the judgment of the Co-ordinate Bench in the HPCL case (*supra*) is binding on us or otherwise when the SLP against the said order has been admitted by the Hon'ble Supreme Court and the same is pending. We find that the Co-ordinate Bench has on almost on similar facts considered all aspects of the concept of manufacture as laid down by the Hon'ble Apex Court in a series of cases as referred to in the said Order and arrived at a categorical finding that blending of MS with MFA does not result into the manufacture of a new product, even if the emerged product is branded as 'speed' and marketed accordingly after some value addition. The said judgment was later followed by another Bench of the Tribunal in the case of *Bharat Petroleum Corporation Ltd. v. CCE, Lucknow* reported in [2009 \(240\) E.L.T. 403](#). We are in agreement with the said judgments. Also, it has been brought to our notice that on similar facts, show cause notice issued by other Commissionerate has been dropped holding that mixing of MS with MFA does not result into a new product and accordingly no manufacture takes place within the meaning of Section 2(f) of the CEA, 1944. In view of above, we do not find force in the arguments advanced by the Revenue that the resultant product namely, 'speed' which emerges after mixing MS with MFA is liable to duty as the process of mixing amounts to manufacture within the definition of manufacture under Sec. 2(f) of CEA, 1944. Consequently, we set aside the impugned Order-in-Original passed by the Commissioner of Central Excise and allow the appeal filed by the Appellant.

In the case of HINDUSTAN PETROLEUM CORPORATION LTD. v. CCE; 2015 (319) ELT 133

6. We have considered the rival contentions and perused the record. It is undisputed that the appellants bring duty paid "Petrol" and "HSD" to their depot where part of such "Petrol" and "HSD" is blended with Multifunction Additives and said products are sold at higher price under the brand names "Power / Turbo Jet" respectively. The issue is whether such blending of "Petrol" and "HSD" with Multifunction Additives amounts to manufacture of a new product?

7. This issue came up before the coordinate Bench of this Tribunal in the case of *Hindustan Petroleum Corpn. Ltd. v. CCE, Delhi & Rohtak*, reported in [2009 \(234\) E.L.T. 648](#) (Tri. - Del.). In the said matter Tribunal took the view that blending of "Petrol" and "HSD" with Multifunction Additives does not bring about a new distinct product and such process cannot be treated as manufacture. Relevant observations of this Tribunal are reproduced thus:

"4.1 The MS and HSD after being blended with small quantity of MFAs remain MS and HSD only, conforming to ISI specifications IS : 2796 - 2000 and IS : 1460 - 2000 respectively. Just because blending improves their quality and after blending they are sold under different brandnames like 'Speed', 'Power', 'Turbojet' etc. they do not become products different from unblended MS/HSD, with different characteristics and usages. Their characteristics remain the same, as they both have to conform to the ISI specification for unblended

MS/HSD and their usage also remain the same. Hon'ble Supreme Court in its judgment in case of CCE v. Sudarshan Chemical Industries (*supra*) and this Tribunal in its judgments in cases of Lakme Lever Ltd. v. CCE (*supra*) and CCE v. Mysore Ammonia Pvt. Ltd. (*supra*) has held that a process or treatment to enhance the marketability of a product or improve the value addition does not amount to manufacture. In this case, the blending only improves the quality of the MS/HSD resulting in better value addition, without charging the basic characteristics and usages of the products.

4.2 The ratio of the Hon'ble Supreme Court's judgment in case of J.G. Glass v. UOI (*supra*) in which it was held that printing of glass bottles does not amount to manufacture is squarely applicable to the facts of this case.

4.3 Hon'ble Supreme Court in a series of judgment - South Bihar Sugar Mill v. UOI reported in [1978 \(2\) E.L.T. J336](#) (S.C.) and Union of India v. Delhi Cloth Mills Ltd. reported in [1977 \(1\) E.L.T. J199](#) (S.C.) and Tega India Ltd. v. CCE reported in [2004 \(164\) E.L.T. 390](#) (S.C.) has held that manufacture implies a process, as a result of which a new product with distinctive name, character and usages emerges, that the word 'manufacture' implies change, but every change in raw material is not manufacture and that there must be such a transformation in the raw as a result of the processing that a new and different article with distinct name, characteristics and usages emerges. This criteria of manufacture is not satisfied in this case as, as mentioned above, the MS and the HSD after blending with MFA remain MS and HSD only and except for a brand name being added to their names, there is no change in their basic characteristics and usages. As mentioned above, there is no separate ISI specification for branded MS or branded HSD and both branded as well as unbranded MS/HSD have to conform to the same ISI specifications. Similarly, there is no change in their use. Thus applying the above-mentioned criteria laid down by the Hon'ble Supreme Court as to what constitutes manufacture, the process of blending ordinary MS or HSD with MFA to make branded MS or branded HSD, does not amount to manufacture."

6. We find no reason to disagree with the aforesaid view taken by the Coordinate Bench of the Tribunal. Therefore, going by the ratio of above judgment we are of the view that impugned order is not sustainable.

7. Accordingly, appeal is allowed and impugned order is set aside.

In the case of BHARAT PETROLEUM CORPORATION LTD. v CCE,; 2018 (361) ELT 950 (Tri.-Chan.)

5. On careful consideration of submission made by the parties, we find that the identical issue came up before this Tribunal in the appellant's own case which is reported (*supra*), wherein this Tribunal observed as under :

4. We have carefully considered the submissions from both the sides. The Appellants bring duty paid MS and HSD to their Depots/Installations where a part of such MS/HSD is blended with MFAs and sold as branded MS/branded HSD under brand names like "Speed", "Power", "Turbojet" etc. The branded MS/HSD are claimed by the Appellants to increase the engine efficiency by reducing the formation of carbon deposits and accordingly are sold at a premium.

The point of dispute in this group of appeals is as to whether the process of blending ordinary MS/HSD with very small quantity of MFAs (0.04% to 0.06%), to make branded MS/HSD amounts to manufacture. After considering the rival contentions on this point, we, for the reasons given below, hold that this process does not amount to "manufacture" and hence would not attract any central excise duty.

4.1 The MS and HSD after being blended with small quantity of MFAs remain MS and HSD only, conforming to ISI specifications IS : 2796 - 2000 and IS : 1460 - 2000 respectively. Just because blending improves their quality and after blending they are sold under different brand names like "Speed", "Power", "Turbojet" etc. they do not become products different from unblended MS/HSD, with different characteristics and usages. Their characteristics remain the same, as they both have to conform to the ISI specification for unblended MS/HSD and their usage also remain the same. Hon'ble Supreme Court in its judgment in case of CCE v. Sudarshan Chemical Industries (supra) and this Tribunal in its judgments in cases of Lakme Lever Ltd. v. CCE (supra) and CCE v. Mysore Ammonia Pvt. Ltd. (supra) has held that a process or treatment to enhance the marketability of a product or improve the value addition does not amount to manufacture. In this case, the blending only improves the quality of the MS/HSD resulting in better value addition, without charging the basic characteristics and usages of the products.

4.2 The ratio of the Hon'ble Supreme Court's judgment in case of J.G. Glass v. UOI (supra) in which it was held that printing of glass bottles does not amount to manufacture is squarely applicable to the facts of this case.

4.3 Hon'ble Supreme Court in a series of judgment - South Bihar Sugar Mills v. UOI reported in [1978 \(2\) E.L.T. 1336](#) (S.C.) and Union of India v. Delhi Cloth Mills Ltd. reported in [1977 \(1\) E.L.T. 1199](#) (S.C.) and Tega India Ltd. v. CCE reported in [2004 \(164\) E.L.T. 390](#) (S.C.) has held that manufacture implies a process, as a result of which a new product with distinctive name, character and usages emerges, that the word "manufacture" implies change, but every change in raw material is not manufacture and that there must be such a transformation in the raw as a result of the processing that a new and different article with distinct name, characteristics and usages emerges. This criteria of manufacture is not satisfied in this case as, as mentioned above, the MS and the HSD after blending with MFA remain MS and HSD only and except for a brand name being added to their names, there is no change in their basic characteristics and usages. As mentioned above, there is no separate ISI specification for branded MS or branded HSD and both branded as well as unbranded MS/HSD have to conform to the same ISI specifications. Similarly, there is no change in their use. Thus applying the above-mentioned criteria laid down by the Hon'ble Supreme Court as to what constitutes manufacture, the process of blending ordinary MS or HSD with MFA to make branded MS or branded HSD, does not amount to manufacture.

4.4 The Tribunal judgment in case of Collector of Customs, Madras v. Air Control System, Madras, wherein Tribunal has held that blending of Sodium Hexa metaphosphate with Polytetrafluorethylene (PTFE) amounts to manufacture is not applicable to the facts of this case. The issue involved in the case of M/s. Air Control System was as to whether PTFE, which is an anti-friction oil, is a raw material, importable under open general import licence. The contention of Customs Authorities in that case was that it is a finished product. It is in this context that the Tribunal observing that since PTFE is sold only after blending with small quantity of Sodium Hexa Metaphosphate which is dispersal agent and without which it is not usable, held that

the blending of PTFE with Sodium Hexa Metaphosphate amounts to manufacture and, therefore, PTFE is a raw material, importable and OGL. The issue involved in the present case is totally different. In the present case, it is not the case of the Respondents that MS/HSD without blending with MFA are not usable. Blending of MS/HSD with MFA to make branded MS/HSD which sell at a premium only improves the quality of the product, and this process, as discussed above, would not amount to manufacture.

6. *As the issue has already been settled in the appellant's own case for the earlier period of the case. In that circumstances, the impugned order is not sustainable and the same is set aside. The appeal is allowed with consequential relief, if any.*

In the case of BHARAT PETROLEUM CORPORATION LTD. v. CCE, 2019 (366) ELT 903 (Tri.-Kol.)

2. *Heard the Ld. Advocate appeared on behalf of the appellant. It has been brought under notice by the Ld. Advocate on behalf of the appellant that the issue is covered by the Tribunal's order in the case of Bharat Petroleum Corpn. Ltd. v. Commr. of C. Ex. & S. Tax, Patna [[2013 \(295\) E.L.T. 106](#) (Tri.-Kolkata)] and also in the case of Hindustan Petroleum Corpn. Ltd. v. Commissioner [[2009 \(234\) E.L.T. 648](#) (Tribunal)]. Following the ratio laid down in the above cases which squarely cover the present case, we allow the appeal.*

4.3 In view of the consistent view taken by this tribunal in the aforesaid judgments, blending of additives with the motor spirit does not amount to manufacture. In the present case not only it is supported by the aforesaid judgments but there is a clear board circular according to which the blending of ethanol and motor spirit cannot be held as amount to manufacture. The adjudicating authority has also made reliance on Notification No.62/2002-CE, 63/2002-CE & 64/2002-CE all dated 31.12.02 and contended that since by these notifications EBMS is exempted that shows that the EBMS is a manufactured goods. We completely disagree with this proposition of the learned adjudicating authority that merely because a product is exempted by itself cannot be a manufacture goods.

4.4 First, it is to be tested that activity is whether amount to manufacture and if it is so, then only the application of exemption notification comes into play. Therefore, it is settled law that merely by any product is appearing either in the notification or tariff entry, for this reason it cannot be concluded that the goods are manufactured goods. The process independently to be seen that whether it amounts to manufacture or not. In this case, there is a catena of case laws cited above and also with the support of the board circular it is clear that blending of ethanol with motor spirit does not amount

to manufacture for the reason that no distinct product with different use arises.

4.5 We also agree with the submission of the learned counsel that respondent has erred in referring the Notification No. 67/95-CE which grants exemption to intermediate goods used captively in the production of excisable goods. As we observed that the activity of blending does not amount to manufacture therefore, motor spirit cannot be treated as a intermediate product but the motor spirit in the form of EBMS is a final product for the reason that there is no difference between the unblended motor spirit and EBMS from Central Excise Tariff therefore, reference to Notification No. 67/95-CE is also not relevant.

4.6 As per our above discussion we are of the clear view that blending of 5% ethanol with 95% motor spirit which made the product EBMS does not amount to manufacture. As regard the payment of duty on the value of EBMS by the appellant, it is settled law that excise duty needs to be paid on the product in the form it is cleared at a value from the factory. This issue has been settled by the Hon'ble Supreme Court in the case of Sidhartha Tubes Ltd. which is reproduced below:

[Order]. - *The order under appeal was passed by the Customs, Excise and Gold (Control) Appellate Tribunal.*

2. *The appellants manufacture mild steel pipes and tubes. About 30% of the production is cleared at that stage, and the product is then known as black pipe. The balance production is taken to separate shed in the appellants' factory premises and galvanised. The dispute is in relation to the galvanised black pipe. According to the appellants, what they clear is black pipe, the process of galvanisation is not a process of manufacture and no addition can be made to the assessable value of the black pipe on account of the galvanisation that subsequently occurred. The Tribunal rejected the contention. It said that the appellants themselves had, in their classification list, declared M.S. black pipes and galvanised pipes as their products. In such a situation, the mere fact that galvanisation was done subsequent to paying duty on the M.S. black pipes could not, by itself, be a ground for not including the cost of galvanisation in the assessable value of the black pipes subjected to the process of galvanisation. While that process did not amount to manufacture, it added to the intrinsic value of the product to make up the full commercial value which was realised by the appellants by charging a higher price for such pipes covering the cost of galvanisation.*

3. *We are in agreement with the view taken by the Tribunal. The mere fact that the process of galvanisation is carried on in another shed can make no difference. When the assessable value is to be calculated of the galvanised black pipe made by the appellants, the element of the cost of galvanisation must form a part thereof.*

4. Our attention was invited to the judgments of this Court which deal with cases where duty was to be levied at an intermediate stage and again at the final stage. They have no relevance to the point at issue.

5. The appeal is dismissed with costs, quantified at Rs. 25,000/-.

4.7 In the above judgment, the assessee sought to pay duty only at the stage of black pipe whereas, they have cleared the goods in the form of galvanized pipe on the ground that the conversion from black pipe to galvanized does not amount to manufacture however, it was held that the duty has to be paid on the galvanized pipe and not on the black pipes on the value at which such galvanized pipe is cleared from the factory. Exactly similar situation prevails in the present case that the appellant has correctly paid the duty on the EBMS and they were not required to pay duty on motor spirit. It is also to be noted that the appellant had paid duty on EBMS instead of motor spirit that they paid higher duty as compared to the duty payable on motor spirit therefore, there is no loss of revenue by paying the duty on EBMS.

05. In view of our above discussion and findings, we are of the clear view that the payment of duty by the appellant on EBMS is correct and legal and they are not required to pay any duty again on the motor spirit.

06. Accordingly, the impugned order is not sustainable hence, the same is set aside. Appeal is allowed.

(Pronounced in the open court on 28.10.2021)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul