

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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.11487 of 2017

(Arising out of OIO-AHM-EXCUS-003-COM-001-17-18 dated 11/05/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-III)

Alicid Organic Industries Limited

Plot No.207-208, Village-Hanumant Henduva, Opp. Gujcomasol,
Near Khari River, Highway, Post: Palavasna,
Mehsana, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Ahmedabad-iii

Custom House... 2nd Floor,
Opp. Old Gujarat High Court, Navrangpura,
Ahmedabad, Gujarat - 380009

.....Respondent

WITH

Excise Appeal No.11488 of 2017

(Arising out of OIO-AHM-EXCUS-003-COM-001-17-18 dated 11/05/2017 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD-III)

Shri Manish C Patel

Director Of Alicid Organic Industries Ltd.
Plot No. 207-208, Village-Hanumant Henduva, Opp. Gujcomasol, Near Khari River, Highway,
Post: Palavasna,
Mehsana, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Ahmedabad-iii

Custom House... 2nd Floor,
Opp. Old Gujarat High Court, Navrangpura,
Ahmedabad, Gujarat - 380009

.....Respondent

APPEARANCE:

Shri J.C Patel & Shri Rahul Gajera, Advocates for the Appellant
Shri Ghanshyam Soni, Joint Commissioner (Authorized Representative) for the Respondent

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

Final Order No . A/10908- 10909 /2022

DATE OF HEARING: 07.07.2022
DATE OF DECISION: 02.08.2022

RAMESH NAIR

These Appeals have been filed by M/s. Alicid Organic Industries Ltd. and Shri Manish C. Patel against Order-In-Original No. AHM-EXCUS-003-COM-001-16-17 dated 11.05.2017 passed by the Commissioner, Central Excise, Ahmedabad.

2. The brief facts of the case are that the Appellant are engaged in the Re-cycling/ refining of Waste Oils/ Sludge. Appellant procured sludge/waste oil from vessels arriving from major ports Kandla, Mundra and Ship Breaking yard, Bhavanagar and also from M/s GSPC, M/s Cairn Energy and M/s Focus Energy. After procuring the said goods Appellant carried out processes like vacuum distillation, filtration, heating and centrifuging and other process to produce Re-usable Fuel Oil and Re-refined used oil. The Fuel oil so produced by Appellant is being sold to traders and consumers in open market as Re-Cycled Fuel Oil /Re-Cycled Industrial Fuel Oil and Re-refined Lube Oil without payment of Central Excise Duty. Appellant's unit was visited by the officers and during the search proceedings, samples of finished products viz., Recycle Waste Oil and Re-refined Used Oil were withdrawn and same were sent for testing to the Chemical Examiner, Central Excise & Customs Laboratory, Vadodara. In his Test Reports, the Chemical Examiner has categorically stated that the samples of Recycled Waste Oil meet the parameter of Fuel Oil as prescribed under IS "1953". Similarly, in case of sample of Refined Used Oil, the same confirms to the parameters of Lubricating Oil. Statement of Shri Manish C. Patel, Director of Appellant was also recorded by the department. According to department, Appellant's processes amounts to manufacture and the recycled fuel oil is appeared to be classifiable under Central Excise Tariff Heading No. 27101990 and Appellant is liable to discharge the Central Excise duty. Accordingly, a show cause notice dated 05.07.2016 was issued to the appellants, *inter alia*, proposing demand of Central Excise duty with interest and also imposition of penalty under Section 11AC of the Act and under Rule 25 of Central Excise Rules, 2002. After due process of adjudication, the adjudicating authority vide impugned order dated 11-5-2017 confirmed the proposed demand and also imposed equal penalty under Section 11AC of the Central Excise Act, 1944. He also imposed penalty under Rule 25 of Central Excise Rules, 2002 and penalty on Shri Manish C. Patel under Rule 26 of Central Excise Rules, 2002. Hence, against the said order, the appellants are before us.

3. Shri J.C Patel, Learned Counsel along with Shri Rahul Gajera, Learned Counsel appearing for the appellant submits that it is settled law as laid down by the Hon'ble Supreme Court and Tribunal that recycling of waste oil/ sludge/used oil by removal of impurities by processes of filtering, heating, distillation, etc., does not amount to manufacture inasmuch as the starting material is oil and resulting material after purification is also oil and not a new and other commodity. He also relied on the following decisions:-

- Mineral Oil Corporation Vs. CC- 1999(114)ELT 166
- Collector Vs. Mineral Oil Corporation -2002(140)ELT A248(SC)
- Raj Petrochem Industries Vs. CCE- 2001(129)ELT186
- CCE Vs. Hindustan Vidyut Product Ltd. – 2002(146)ELT 102
- IFP Petro Products Pvt. Ltd. Vs. CCE -2017(348)ELT 172
- Servo-Med Industries Pvt. Ltd. Vs. CCE-2015(319)ELT 578(SC).

3.1 He also argued that process of distilling/purifying spent solvent does not amount to manufacture. In support of his argument, learned Counsel has relied upon the following case laws :-

- CCE Vs. Aurobindo Pharma Ltd. – 2006(200) ELT 236
- Commissioner Vs. Aurobindo Pharma Ltd. -2013(292)ELT A64 (AP)
- Commissioner Vs. Aurobindo Pharma Ltd. – 2018(361)ELT A81(SC).

3.2 He also submits that Ld. Commissioner has placed reliance on Note 4 of Chapter 27 of Central Excise Tariff to hold that there is “manufacture”. It is not the case of the department in the show cause notice that the said Note -4 is applicable in the present case. The Show Cause Notice has neither invoked the said Note -4 nor is it an allegation in the show cause notice that the terms of the said Note -4 are satisfied and attracted in the present case. Therefore, by relying on the said Note 4, the Commissioner has traversed beyond the Show Cause Notice and on this ground itself the Commissioner’s order is liable to be set aside. He placed reliance on the following judgments.

- CCE Vs. Ballarpur Industries Ltd. – 2007(215)ELT 489(SC)
- CCE Vs. Gas Authority of India Ltd. – 2008(232)ELT 7(SC)
- (iii)Commissioner Vs. Reliance Ports and Terminals Ltd. -2016 (334) ELT 630 (Guj.)

3.3 Without prejudice he also submits that the said Note 4 applies is case of processes mentioned therein, undertaken in relation to lubricating oils and Lubricating preparations. The Appellant has not undertaken any such process and that too in relation to Lubricating Oils and Lubricating preparations. The Circular No. 1024/12/2016 clarifies that Note 4 is not applicable to the waste Oil. In the present case, it is not the case in the show cause notice that the waste oil/sludge and used oil or the recycled waste oil/sludge and recycled used oil are Lubricating Oils of CETH 27101980. As per the Show Cause Notice the recycled waste oil/sludge/used oil are classifiable under CETH 27101990, to which the said Note 4 does not apply as per the said CBEC Circular.

3.4 On limitation he submits that over the years, there has been correspondence addressed by Central Excise to Customs about receipts of said Waste Oil/ Sludge in the premises of the Appellants. Department was all along aware of the Appellant's activity in respect of Waste Oil /Sludge/Used Oil. When the activity of the Appellant was well within the knowledge of the department and the department after calling for information had accepted the Appellant's stand that the activity does not amount to manufacture, the question of applicability of larger period of limitation does not arise. He placed reliance on the following decisions.

- CCE Vs. Chemphar Drugs & Liniments -1989(40)ELT 276
- Pushpam Pharmaceuticals Co. Vs. CCE-1995(78)ELT 401.

3.5 He also submits that the Board Circular No. 1024/12/2016 also clarifies that in which case Note 4 is applicable, for this reason also for the demand of larger period is not applicable.

4. On the other hand Shri Ghanshyam Soni, Learned Joint Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order and placed reliance on the following decisions.

- Priya Blue Industries Ltd. Vs. CC, Jamnagar – 2013(293)ELT 547 (Tri-Ahmd.)
- CC, Kandla Vs. Rajkamal Industries Pvt. Ltd. passed in Tax Appeal No. 297-299/2021.

5. We have carefully considered the submissions made by both the sides and have gone through the facts and merit of the matter. The only issue to be decided is whether conversion of waste oil/used oil/sludge obtained from various sources into reclaimed fuel oil / re-refining used oil amounts to manufacture as per Section 2(f) of Central Excise Act, 1994 and classifiable under Central Excise Tariff Sub-heading No. 27101990 of Central Excise Tariff Act, 1985, attracting Central Excise Duty as claimed by the department or the same merit classifiable under Chapter heading 27109900 as claimed by the Appellant.

5.1 The basic fact that is not disputed is that the Appellant purchasing waste/ sludge oil from vessels and other sources. This is sold as waste oil/sludge oil and is purchased by the appellant also as waste oil /sludge oil. For removing impurities from said waste oil Appellant undertake various

processes. The processing undertaken by the appellant is in form of filtering, distillation, dehydration, centrifuging etc. The entire tenor of the Adjudicating Authority while confirming the demands is only on the ground that the used oil which was unfit for use as fuel oil was made fit for use by the appellant by refining or reprocessing the same and hence, characteristic and the use has changed. Due to which Chapter Note No. 4 of Chapter 27 gets attracted and the said activity becomes manufacture. We observe that the purifying of the sludge/used oil would not amount to manufacture. Manufacture implies a change, but every change is not manufacture. The Apex Court in the landmark decision in the case of *U.O.I. v. Delhi Cloth and General Mills Co. Ltd.*-1977(1)E.L.T.(J199), held that "The word 'manufacture' used as a verb is generally understood to mean as 'bringing into existence a new substance,' however, minor in consequence the change may be." The true test for determining whether manufacture can be said to have taken place is whether the commodity which is subjected to the process of manufacture can no longer be regarded as the original commodity but is recognized in trade as a new and distinct commodity. In the present case, the appellant brings used waste oil /sludge oil and by removing impurities, it is made again useable as oil. Both before and after the processing, the product remains as only oil. That being so, it cannot be said that a new and distinct commodity has come into existence consequent to the process undertaken by the appellant. The oil contents are not consumed during the process of recycling and the oil remains oil only. We also observed that the process discussed by the Ld. Commissioner in this context only cleaning process is undertaken on the waste/ sludge oil and used oil and the oil contents remain as it is during the process. The oil is separated from the impurities and no process is done to obtain material other than oil. In the present case it cannot be said that a new and distinct commodity has come into existence consequent to the process undertaken by the Appellant.

5.2 We find that an identical issue was before the Co-ordinate Bench of the Tribunal in the case of *CCE, Chennai-I vs. Metropolitan Transport Company* 2008 (224) E.L.T. 603 (supra). We find that the ratio in the said decision is squarely applicable in this case also. We may reproduce the same:

"We find that the process in question (reclamation of usable lubricating oil from used (waste) lubricating oil is very much comparable to reclamation of usable transformer oil from used (waste) transformer oil. In the case of Mineral Oil Corporation

(supra), the Tribunal held that such reclamation of transformer oil did not amount to 'manufacture' so as to attract levy of duty of excise and this view was upheld when the civil appeal filed by the department was dismissed by the Apex Court. We find no reason to interfere with the impugned order, wherein it was held that the Tribunal's decision in Mineral Oil Corporation (supra) would apply on all fours to the subject case."

5.3 We find strong force in the contentions raised by the learned Counsel that the issue in this case is identical to the issue in the case of *Mineral Oil Corporation* (supra) wherein Co-ordinate Bench of Delhi took the view that "Reclamation of transformer oil from used transformer oil does not amount to manufacture so as to attract levy of Central Excise duty afresh" and the said decision has been upheld by the Hon'ble Supreme Court by dismissing the Civil Appeal filed by the Revenue as reported at 2002 (140) E.L.T. A248 (S.C).

5.4 We also rely on the Tribunal Bangalore ruling in the case of *Cee Jee Lubricants v. CCE, Cochin* [2010 (251) E.L.T. 439 (Tri.-Bang.)] wherein it was clearly held that Manufacture - Refining the used/waste oil procured from market, in the form of vacuum distillation, centrifuging and removal of moisture, carbon and other impurities, does not amount to manufacture - Section 2(f) of Central Excise Act, 1944 - Chapter 27 of Central Excise Tariff.

5.5 In the matter of *Universal Viscose Oil Products Vs. Commissioner of Trade of Tax, U.P.*- 2010 (258) E.L.T. 22 (All.) the Hon'ble High Court of Allahabad held as under: -

"Manufacture - Cleaning of used oil - Used mobil oil purchased from unregistered dealer and impurities removed after cleaning process and cleaned oil sold - Used mobil oil whether undergoing change in character after cleaning - No new commercial commodity comes into being by cleaning process - Used mobil oil with impurities not consumed in manufacturing process and new product not emerges - Mobil oil before and after clearing remains mobil oil with no change in form, nature and characteristic - Mobil oil obtained as a result of cleaning process not a manufactured product and not liable to sales tax."

Accordingly, respectfully following the said decisions, we are of the considered view that the impugned orders are unsustainable.

5.6 We also find that for applying the said Chapter Note 4 to any goods for examining, whether, manufacture has taken place, it is essential to establish (i) either there is labelling or re-labelling of containers, (ii) there is re-packing from bulk packs to retail packs (iii) such treatments is adopted, so that product is rendered marketable to consumer. From the show cause notice and relied upon documents of show cause notices, we do not find that Revenue could establish that the goods emerged after removal of impurities from waste oil have been marketed to consumer. We also noticed that nowhere on the website of the Appellant has mentioned that the product is original, they have described it as recycled or re-refined products only. There is nothing in the marketing which changes characteristics or usage of the recycled waste oil. Further, there was no evidence of labelling or re-labelling or for re-packing into retail packs. It is admitted facts that the Appellant have only undertaken purification process on Waste Oil/Sludge and Used Oil and have not undertaken the processes mentioned in the said Note 4. Moreover the Chapter Note 4 of Chapter 27 of Central Excise Tariff Act, 1985 is applicable in the case of Lubricant Oil and Lubricating preparations only and it cannot be applied for recycled waste /sludge Oil.

5.7 We have also perused the Circular No. 1024/12/2016-CX, dated 11-4-2016 on the subject wherein the issue of clarification regarding re-refined used or waste oil has been discussed and certain instructions are given therein. Waste oil has two sub-classifications viz. 2710 91 00 and 2710 99 00 upon its composition whereas Lubricating oil is classifiable under CETH 2710 19 80. Used lubricating oil collected is not fit for use as primary products and will be classified as waste oil whereas processed waste oil, which becomes fit for use as lubricating oil and would qualify as lubricating oil. The test for levy of Central Excise duty is whether the lubricating oil (produced from the waste oil) has undergone any of the process listed in Chapter Note 4 of Chapter 27. The circular specifically talks about the lubricating oil obtained from re-refining or re-processing waste oils and other oils obtained from various sources. In the instant case the product was not lubricating oil falling under the 2710 19 80 but is reclaimed fuel oil falling under 2710 99 00. The circular also states that the chapter note applies only to "lubricating oils and lubricating preparations of Heading 2710". Other goods falling under CETH 2710 are not covered by the chapter note as the

same is reclaimed fuel oil obtained from waste oils. The deeming fiction provides that when one of the process listed in the chapter note is carried out on lubricating oil or lubricating preparations, it shall be deemed to be manufacture. The instant case is the reclaimed fuel oil which is also waste oil falling under 2710 99 00 but used as fuel only and is not a lubricating oil or used as lubricating oil. It is also worthwhile that similar to chapter note 4 for Lubricating oil and preparations there is no such chapter note for the product of the appellant in question. This also suggest that legislators are very conscious that recycled oil from waste oil and sludge should not be made amounts to manufacture and should not be liable to duty.

5.8 Based on the above discussion, Circular dated 11-4-2016 and following the above rulings of higher judicial fora it can be held that the process of cleaning of waste oil to yield reclaimed fuel oil does not amount to manufacture as defined under Section 2(f) of the Central Excise Act, 1944. Once it is held that the activity is not manufacture all he demands including duty, interest, penalties and personal penalty in the impugned shall not sustain on merit.

5.9 The appellant have also raised the issue on limitation that the demand for the extended period is not sustainable as there is no suppression of fact. We also find that the contention of the appellant as regard the demand being time bar is correct. On the careful scrutiny of the records and submission made by the appellant we find that in November 2008, the Superintendent of Central Excise by letter dated 28.11.2008 called for information from the Appellant regarding the import of Sludge Oil/Waste Oil and process undertaken by the Appellant in respect of the Waste Oil/ Sludge Oil and the value of clearance for the period from 2004 to 2008-09. The Appellant provided the said information and details by letter dated 22.12.2008. The Appellant's stand that processes did not amount to manufacture and no excise duty was payable, was accepted by the department and no show cause notice demanding duty was issued during the said period. By letter dated 13.12.2010 addressed to the Customs Houses and copy endorsed to the Appellant, the Superintendent of Central Excise informed the Customs House that Appellant was not having Central Excise registration as the Appellant's activity was not excisable. We also observed from the letters submitted by the Appellant that over the years, receipts of storage of the Waste Oil/Sludge Oil was being monitored by the Central Excise Authority. Upon receipt and storage in the Tank, the same

used to be sealed by Central Excise authority pending test report and only upon the receipt of test report confirming that the Oil was not falling under Schedule 8 of the Waste Management and Handling Rules, the Appellant was permitted to remove the Oil from the sealed tank. It is thus clear that department was aware of the Appellant's activity in respect of Waste Oil/ Sludge/Used Oil. The Appellant have not suppressed anything from the department. We also noticed that CBEC vide circular No. 1024/12/2006-CX dated 11.04.2006 also instructed that " the issue is interpretational in nature and therefore where a demand is raised pursuant to this circular, it should be raised for normal period of limitation only. SSI benefit, where admissible, should be extended". Therefore, in this fact the demand confirmed by the Ld. Commissioner invoking the extended period legally not sustainable and we set aside the same on limitation too.

6. As per our above discussion and finding the demand of duty is not sustainable on merit as well as on limitation. Accordingly, impugned order is set aside and appeals are allowed with consequential relief, if any, in accordance with law.

(Pronounced in the open court on 02.08.2022)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER (TECHNICAL)

Geeta