REGISTERED / AD

FAX : 0532-2400149

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 10/08/2016

To
Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70630-70633/2016-EX[DB] dated 03/08/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/1350/2012	**IFP PETRO PRODUCTS PVT LTD** PLOT NO 16/2,SITE-IV,INDUSTRIAL AREA, SAHIBABAD, GHAZIABAD(up)
2	E/1351/2012	**ANANT BHARGAVA DIRECTOR** IFP PETRO PRODUCTS PVT LTD, PLOT NO 16/2,SITE-IV INDUSTRIAL AREA, SAHIBABAD, GHAZIABAD.
3	E/51763/2015	**I F P PETRO PRODUCTD PVT LTD** (SHRI ANANT BHARGAVA) PLOT NO. 16/2 C, SITE-IV, INDUSTRIAL AREA, SAHIHABAD GHAZIABAD UP 201010
4	E/51764/2015	**SHRI ANANT BHARGAVA DIRECTOR OF** (M/S IFP PETRO PRODUCTS PVT LTD) PLOT NO. 16/2 C, SITE-IV, INDUSTRIAL AREA. SAHIHABAD GHAZIABAD UP 201010

Name and Address of
Respondent

C.C.E. & S.T.-Ghaziabad
202...WING A C.G.O.
COMPLEX-II,KAMLA NEHRU
NAGAR, GHAZIABAD,
UTTAR PRADESH-201002

Other Appellants and Respondents as per Annexure

Copy To

6Advocate(s) / Consultant(s):

V. Lakshmi Kumaran
5, JANGPURA EXTENTSION
LINK ROAD NEW DELHI-
110014

SH RAJESH CHIBBER,ADV
FA-9 KAVI NAGAR
GHAZIABAD

8 Bar Association, CESTAT, Allahabad

9 Director Publications, Customs, Excise, I.P. Estate, Delhi

10 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

11 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

12 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

13 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

14 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

15 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

16 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

17 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

18 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

19 C.D.R.   20 Office Copy   21 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Appeal Nos.E/1350, 1351/2012 & E/51763, 51764/2015-EX[DB]

Arising out of Orders-in-Original Nos.09-10/COMMR./GZB/2011-2012 dated 23.02.2012 and 09-11/COMMR./GZB/2014-15 dated 20.01.2015 both passed by Commissioner, Customs, Central Excise & S. Tax, Ghaziabad.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

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1. Whether Press Reporters 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 the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

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Ifp Petro Products Pvt. Ltd., Anant Bhargava Director, I F P Petro Product Pvt. Ltd., Shri Anant Bhargava ...APPELLANT(S)

VERSUS

Commissioner of Central Excise & S.T. Ghaziabad, ...RESPONDENT (S)

APPEARANCE

Shri Rajesh Chibber, Advocate for the Appellant (s)
Shri Rajeev Ranjan Jt. Commissioner, (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 03.08.2016

FINAL ORDER NO. - 70630-70633/2016

सीमा शुल्क उत्पाद एवं सेवा कर अपीलीय अधिकरण CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per Mr. ANIL G. SHAKKARWAR:

The present four appeals are filed by the appellants against Orders-in-Original Nos.09-10/COMMR./GZB/2011-2012 dated 23.02.2012 and 09-11/COMMR./GZB/2014-15 dated 20.01.2015, both passed by Commissioner, Customs, Central Excise & S. Tax, Ghaziabad.

2. The brief facts of the cases are that the appellants procured waste and used Oil from service stations of Honda, Maruti Udyog, etc. and subject ~~of~~ ed such waste and used Oil to certain processes, such as, Dehydration, Distillation, Clay Polishing and Filtration and the goods emerged (clean oil) were packed in bulk packs of drum and sold to the industrial customers. It appeared to Revenue that in view of Chapter note 4 of Chapter 27 of schedule to the Central Excise Tariff Act, 1985, the treatment rendered by the appellant, amounted to manufacture. Therefore, through show cause notice No.01/COMMR./GZB/2011-12 dated 11.04.2011, the appellants were called upon to show cause as to why Central Excise duty of Rs.1,92,02,227/- for the period from 2006-07 to 2010-11 (up to October), should not be demanded from them under Section 11A of Central Excise Act, 1944. The show cause notice also had a proposal for recovery of interest and imposition of penalty. The appellants, before the Original Authority, relied upon the decisions of Hon'ble CESTAT in the cases of M/s Mineral Oil Corporation Vs. Commr. of Central Excise, Kanpur : 1999 (114) E. L. T. 166 (Tribunal) and M/s Raj Petrochem Industries Vs Commr. of Central Excise &Customs, Vadodara : 2001

(129) ELT 186 (Tri.-Mum.) wherein this Tribunal had held that refining of old and used oil did not amount to manufacture. Further, they contended that removing impurity does not change the composition and, therefore, it does not amount to manufacture. They have also contended that they are not receiving the bulk pack and did not pack goods in retail pack and, therefore, Chapter note 4 is not applicable to them. They have also claimed that no new product was produced and, therefore, Excise duty was not leviable on the goods emerged after processing. The Original Authority held that consequent to the insertion of Chapter note No.4 in the said Chapter 27, adoption of any other treatment to render the product marketable to the consumer amounts to manufacture and therefore, he has confirmed the demand. In the said adjudication, the Original Authority has also clubbed another show cause notice dated 29.11.2011, for the period from 01.11.2010 to 31.08.2011 and confirmed the demand of Central Excise duty amounting to Rs.2,54,82,271/-. He also directed the appellants to pay interest and imposed ~~and~~ equal penalty on the appellants and imposed penalty on Rs.10 lakhs on Mr. Anant Bhrgava, Director of appellants' company. The said Order-in-Original is bearing No.09-10/COMMR./GZB/011-12 dated 23.02.2012. Against the Order-in-Original dated 23.02.2012, the appellants are before this Tribunal in Appeal No.E/1350/2012 & E/1351/2012.

3. Subsequently, Revenue had issued three show cause notices to the appellants dated 19.09.2012, 04.09.2013 & 01.05.2014 on similar grounds and the said three show cause notices were adjudicated through Order-in-Original No.09-11/COMMR./GZB/2014-15 dated 20th January, 2015. Through the Order-in-Original dated 20th January, 2015, Original Authority on similar lines, confirmed the demand of Central Excise duty amounting to Rs.2,23,55,726/- and imposed equal penalty. Original Authority also directed the appellants to pay interest. Through said order, personal penalty of Rs.20 lakhs was imposed on Mr. Anant Bhargava, Director of appellants' company. Challenging the said Order-in-Original dated 20th January, 2015, appellants are before this Tribunal through appeal No.E/51763/2015 & E/51764/2015.

4. The grounds of appeal, inter-alia, included that by the process of refining from the waste oil, no new product emerges and therefore, ~~and~~ the activity does not amount to manufacture. They have also relied on the ruling by the Hon'ble Supreme Court in the case of **Collector Vs. Mineral Oil Corporation reported at 2002(140) E.L.T. A248 (S.C.)**. They further contended in their appeal that application of ingredients of Note 4 to Chapter 27 in their case is improper. They further argued that there is no labeling or re-labeling of container and that there is no re-packing from bulk to retail pack involved in their cases. They further emphasized that there should be adoption of any

treatment to the goods to render them marketable to the consumer, as a requirement for applying the said Chapter note 4 and they contended that the said Chapter note 4 is not applicable to them. They have also contended that extended period is not invokable for issue of show cause notice dated 11.04.2011.

5. The learned Counsel for the appellants has taken us through the process that they are applying to the waste oil collected from service centers. He has also taken us through the ingredients of Chapter note 4 of said Chapter 27, and also through the invoices issued by them, which are the documents relied upon for issue of show cause noticed dated 11.04.2011 and which are available at Page No.189 to 204 of Paper book for appeal No.E/1350/2012 and argued that the ingredients in the Chapter note 4 are that either the goods are to labeled or re-labeled, or there has ~~been~~ to be re-packing from bulk packs or the treatment adopted should render the product marketable to consumer, then alone such activity will amount to manufacture. He has argued that in the show cause notice, it is not established that the processes adopted by them, renders the treated waste oil marketable to consumers. In fact, the treated oil was removed in ~~pack,~~ packing of 210 liter drums and sold to industrial customers for further used and Revenue, could not show any evidence to establish that a single invoice involves sale of process of waste oil to consumers, who use it in place of fresh lubricating oil. He has

argued that in view of the sale of the goods to industrial customers the ingredient of product becoming marketable to consumer has not been established in the show cause notice. Hence, the show cause notices are not sustainable.

6. The learned A.R. appearing for Revenue has taken us through Para 42 of the Order-in-Original dated 23.02.2012, wherein the Original Authority has held that the refining of waste and used oil and packing of it, renders the same as marketable and the product so emerges after completion of all these processes have distinct~~ly~~ use~~d~~ and cannot be sold in the market as waste and used oil. Therefore, the process of refining of waste and used oil amounts to manufacture.

7. We have taken into consideration the rival contentions. We 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 labeling or re-labeling of containers, (ii) there is re-packing from bulk packs to retail packs (iii) such treatments have adopted, so that product is rendered marketable to consumer. From the show cause notice and relied upon documents for issue 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 marked to consumer. In fact, there was not a single invoice raised to a consumer, establishing that the goods were marketable to consumer. All the invoices were for bulk packing and sold to

industrial customers. Further, there was no evidence of labeling or re-labeling or for re-packing into retail packs. We, therefore, hold that all the show cause notices involved in the four appeals in hand lack, *prima facie*, evidence for leveling charges leveled. Therefore, we hold that the above said four show cause notices are unsustainable. We, therefore, hold that the two Orders-in-Original impugned in four appeals in hand, are set aside, and all the appeals are allowed and the appellants shall have liberty to seek consequential relief, if any.

(Dictated & Pronounced in the open Court)

—Sd—
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

—Sd—
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Mishra

प्रमाणित प्रति / Certified True Copy
30.8
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001