FAX : 0532-2400149

REGISTERED / AD

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

Dated: 06/10/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70939-70944/2016-EX[DB] dated 25/05/2016

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/3862-3867/2006	DHAMPUR ACO-CHEM LTD 4/6-4/7, SITE IV, INDUSTRIAL AREA, SAHIBABAD, DISTT-GHAZIABAD.
		Name and Address of Respondent
2		-C.C.E.GHAZIABAD CGO complex II, Kamla Nehur Nagar, Ghaziabad.

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s):

A. K. Mishra, Consultant,
B-261, North Ex Mall,
SECTOR-9, ROHINI,
Delhi-110085

4 Bar Association, CESTAT, Allahabad

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi 110032
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

27/10/16

ISSUED ON

SIGN. (DESPATCH SECTION)
CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
38, M. G. MARG, ALLAHABAD-211001.

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

Ex.Appeal Nos.3862-3867/06

Arising out of OIA Nos.131 to 136-CE/GZB/2006 dated 31/08/2006 passed by the Commissioner (Appeals), Central Excise & Customs & Service Tax, Meerut I.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, 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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M/s Dhampur Alco-Chem Ltd.
Shri Sorabh Gupta, Director
Shri Murli Monohar Gupta

...APPELLANT(S)

VERSUS

Commissioner of C.Ex., Ghaziabad

RESPONDENT (S)

APPEARANCE

Shri Abhas Mishra, Adv. for the Appellant (s)
Shri Ahibaran, Addl.Commr. (A.R.) for the Respondent

CORAM:

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

DATE OF HEARING & PRONOUNCEMENT : 16.10.2015

Final ORDER NO.70939-70944/2016

Per Mr. Anil Choudhary :

The Appellants, M/s Dhampur Alco-Chem Ltd. & Others, are in Appeals against the common Orders-in-Appeal Nos. 131 to 136-CE/GZB/2006 dated 31/08/2006 passed by the Commissioner (Appeals), Central Excise & Customs & Service Tax, Meerut I. The other appellants are Director of M/s Dhampur Alco-Chem Ltd.. The details of the appeals are as follows:

Sl.No.	Appeal No.	Party's Name	Duty (Rs.)	Penalty (Rs.)	Redemption fine (Rs.)
1.	E/3862/06	M/s Dhampur Alco-Chem Ltd.	16,64,923/-	16,64,923/- (u/R-26 of CER, 2002)	
2.	E/3863/06	M/s Dhampur Alco-Chem Ltd.		32,703/- (u/R-26 of CER, 2002)	51,100/-
3.	E/3864/06	Sorabh Gupta, Director		16,64,923/- (u/R-26 of CER, 2002)	
4.	E/3865/06	Sorabh Gupta, Director		32,703/- (u/R-26 of CER, 2002)	
5.	E/3866/06	Murli Monohar Gupta, Director		16,64,923/- (u/R-26 of CER, 2002)	
6.	E/3867/06	Murli Monohar Gupta, Director		32,703/- (u/R-26 of CER, 2002)	

2. The appellant is a dealer and registered with the Central Excise Department and engaged in the activity of distributing hazardous chemicals, namely, Acetic Anhydride and Ethyl Acetate etc. They received the chemicals in tanker and tanker Lorry from the Manufacturer on Payment of Central Excise Duty. The Chemical was

unloaded from the tanker into 200 kgs. Drums/35 kgs. Jerry Cans/Carboys and after receiving the Chemicals, the drums/cans/carboys received were kept in the registered godown premises of the appellant till Dispatch/sale. The Chemical mainly Acetic Anhydride and Ethyl Acetate, which is a liquid chemical at room temperature and is highly corrosive, hygroscopic having pungent smell. This Chemical is used as raw material for manufacturing of bulk drugs intermediate, insecticides, pesticides and dyes Et Cetera and is notified under Nareotic Drugs & Psychotropic Substances Act, 1985. Thereafter, a plain paper label/sticker showing the name of appellant, description of item, tare-weight, gross weight and net weight is pasted on the drums/cans/carboys, as the case may be, before dispatch/sale. The chemicals are cleared to the respective manufacturers and cenvat is passed on to the registered dealer/manufacturer buying from the appellant. The appellant was regularly filing prescribed returns with the revenue. As per the show cause notice dated 17.08.2004, it appeared to Revenue that the appellant although registered as a dealer, is engaged in labelling/relabelling of the goods which are repacked in containers. The repacking of the said goods from the bulk packs, to retail packs amounts to manufacture as per Chapter Note 11 of chapter 29 of CETA, 1985, whereas the appellant was not registered as a manufacturer with the Department and not paying Central Excise duty. The revenue officers visited the factory premises of the appellant of 27/6/2003 and found that all the goods/chemicals-Acetic Anhydride and Ethyl Acetate was found packed in jerry canes. It appeared to Revenue that the appellant have done the repacking from by bulk pack and subsequently labelling of the cans/drums was done at the time of dispatch of the said goods. Accordingly, it appeared that the appellant have violated law by not getting itself registered as manufacturer and paying the duty. Accordingly, the goods/chemicals lying in the premises of the appellant, was liable to confiscation and further, appellant was liable to penal action under Rule 25 of CER read with Section 11 AC of the Act. Accordingly, the stock of 5120.10 kg valued at Rs.2,04,394.40 lying duly packed in jerry canes was seized and separate show cause notice dated 5/11/03 was issued. The statement of Shri Ram Prakash, Senior Accountant-cum-Godown in-charge of the appellant, was recorded on 27/6/03, wherein he confirmed that they filled Acetic Anhydride and Ethyl Acetate from Tanker into Jerry Cans (Carboys) and labeled the cans/carboys before dispatch of the said goods. Accordingly, the appellant was required to show cause as to why not excise duty be demanded amounting to Rs.16,64,923/- for clearance of 1,87,362.70 kgs of Acetic Anhydride during the extended period from 9/9/99 to 13/6/2003 and further, why not penalty be imposed under Rule 173Q of CER, 1944 read with Rule 25 CER 2002 read with Section 11 AC of the Act. Further, Shri Sourabh Gupta, Director of Appellant Company and Shri Murli Manohar Gupta, also Director were required to show cause why not penalty be imposed under Rule 26 of CER, 2002.

3. The appellant contested the show cause notices stating that the activity did not amount to manufacture as they were not repacking the chemical from bulk pack to retail pack. The chemical was received

through tanker lorries from the manufacturer of the chemical for trade and the same was emptied into drums/jerry cans/carboys as the process of receipt of the goods. Further, they were selling the chemicals to manufactures and not to consumers. Further, they have not adopted any treatment to render the product marketable to the consumer (end-user). Consumer is defined under the Consumer Protection Act as an individual or group of individuals, who buy the product for the own consumption or earning their livelihood. Further, it was contended that the 'retail packs' have been defined under the Standards of Weights & Measures (Packaged Commodity) Rules, 1977, wherein the 'retail pack' is defined as a pack ment for sale to the consumer. It is further contended that the activity of labelling the jerry cans or drums only rendered the product marketable to the industrial consumers but does not amount to adoption of any treatment for selling the same to consumer/ individual nor there is any element of retail packs. Further, the ld. counsel appearing for the appellants relies on the ruling of Honourable Supreme Court in the case of Commissioner of Central Excise versus BOC (India) Ltd. : 2008 (226) ELT 323, wherein under the fact that BOC is a manufacturer of oxygen, acetylene et cetera. Hilium is procured from other manufacturers and sold under BOC brand name claimed as part of its trading activity. The Revenue alleged that since BOC had affixed lebel of their own name and other particulars, therefore, in terms of Note 10 of chapter 28, the legal fiction of manufacture is created and accordingly, duty was demanded. The Commissioner (Appeals) had confirmed the order of the adjudicating authority and in further appeal to the Tribunal, the appeal of BOC was allowed relying on the ruling of this Tribunal in the case of Ammonia Supply Company Vs. CCE : 2001 (131) ELT 626 in which the Tribunal held that there was no packing/re-packing, labeling/re- relabeling or any other activity to make the product marketable and further the Apex Court further relied on the ruling in the case of CCE versus Johnson & Johnson Ltd. 2005 (188) ELT 467 (SC) wherein by interpreting Note 5 of Chapter 30 which is similar to Note 10 of Chapter 28 held that mere packing for marketing would not amount to manufacture. That mere labeling or relabeling in the absence of any activity of repacking from bulk packs to retail packs would not render the product marketable directly to the consumer.

3. The ld.A.R. for revenue relies on the impugned order.

4. Having considered the rival contentions and relying on the ruling of the Honourable Supreme Court in the case of BOC Limited (supra) and the ruling of this Tribunal in the case of Ammonia Supply Company (supra), we hold that the appellant is not engaged in repacking from bulk packs to retail packs. Neither, the appellant is packing the goods in retail packs and neither adopting any of the treatment to retail sale to the consumer. As such, we hold that the provisions of Note 11 of Chapter 29 of CETA, 1985, are not attracted. we also hold that under the facts and circumstances, there is no concealment of facts, contumacious conduct et cetera on the part of the appellants and as such extended period of limitation is not attracted in this case. Accordingly, the impugned orders are set aside.

The appellants will be entitled to consequential benefits in accordance with law.

(Operative part was pronounced on conclusion of hearing)

Sd/-	Sd/-
(ANIL CHOUDHARY)	(RAJU)
MEMBER (JUDICIAL)	MEMBER (TECHNICAL)

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