CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

CENTRAL EXCISE APPEAL NO.21679 OF 2015

(Arising out of Order-in-Original No.MYS-EXCUS-000-COM-JSC-02-15-16/2891 dated 06.05.2015 passed by the Commissioner of Central Excise, Customs and Service Tax, Mysore)

M/s. Merlyn Hydrocarbons Pvt. Ltd.
Plot No.366, KIADB Industrial Growth Centre, Holenarasipura Road,
Hassan-573 201.

Appellant(s)

VERSUS

Commissioner of Central Excise,
Customs and Service Tax Mysore,
S1-S2, Vinaya Marga,
Siddhartha Nagar,
Mysore-570011.

Respondent(s)

WITH

CENTRAL EXCISE APPEAL NO.21838 OF 2016

(Arising out of Order-in-Original No.MYS-EXCUS-000-COM-GVK-02-15-16/2891 dated 06.05.2015 passed by the Commissioner of Central Excise, Customs and Service Tax, Mysore)

M/s. Merlyn Hydrocarbons Pvt. Ltd.
Plot No.366, KIADB Industrial Growth Centre, Holenarasipura Road,
Hassan-573 201.

Appellant(s)

VERSUS

Commissioner of Central Excise,
Customs and Service Tax Mysore,
S1-S2, Vinaya Marga,
Siddhartha Nagar,
Mysore-570011.

Respondent(s)

APPEARANCE:

Mr. P.R. Renganath M Kannan, Advocate for the Appellant

Mr. Sanjay Venkat, Superintendent (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order Nos. 20485 - 20486 /2025

DATE OF HEARING: 27.03.2025
DATE OF DECISION: 27.03.2025

PER : DR. D.M. MISRA

These two appeals are filed against respective Orders-in-Original passed by the Commissioner of Central Excise, Mysuru.

2. Breifly stated the facts of the case are that the Appellants are manufacturer of fuel oil and other oils falling under Chatper heading 27101950 of CETA, 1985. During the relevant period i.e. from May 2013 to July 2015, the appellants had received in their factory premises "WASTE OIL" falling under Chapter sub-heading 27109900 from ships and also they procure such oil from other local industries. The said waste oil was procured on payment of applicable customs and central excise duties as the case may be which contains water and other impurities. The appellants subject the said waste oil to several processes such as filtering, action of a Centrifuge, Distillation, Blending, etc. by which the oil attains purification and collected in the storage tank which becomes usable. Alleging that the purified oil emerged after processing of waste oil classified under Chapter sub heading 27101950, attract Central Excise Duty @ 14% adv., the Departmnet issued show-cause notices from time to time commencing from 02.04.2014 proposing to recover the duty on the processed oil during the said period; since for the earlier period the appellants had approached Settlement Commission against show-cause notice issued on 08.04.2011 demanding Central Excise duty Rs.75,18,241/- which has been settled by

the Commissioner by its order dated 26.04.2012. On adjudication, the demands have been confirmed by the impugned orders, hence the present appeals.

3. At the outset, the Learned advocate for the appellants has submitted that, they were issued four show-cause notices during May 2013 to July 2015 demanding duty on the processed waste oil alleging that the waste oil when subjected to various processes results into the 'manufacture' of a new product, hence dutiable. The learned advocate has further submitted that the reclaimation of purified oils from waste/used oils is a common practice, being both economical and environment friendly. Therefore, transormer oils, lubricating oils, fuel oils, etc. are reclaimed from waste oil having the same nature. It is done by the processes such as settling the oil, using centrifugal mechanism, vaccum heating to remove the water and other impurities present in the waste oil. The appellants had procured waste oil being fuel oil with impurities which typically is used in ships; before usage of the oil in the ships a jet stream of water is passed through the fuel oil to obtain first grade fuel oil, the remaining fuel oil with certain impurities is washed away with the water. It is this fuel oil mixed with waste and some impurities that is procured by the appellant on payment of duty. The appellants recycles this waste fuel oil to reclaim fuel oil by various processes like centrifuging, vaccum heating etc. Therefore, it is a fact that the appellant receive fuel oil with impurities and what clears after purification/recycling fuel is oil only. No new product emerges. The very nature of its nominclature indicates that no new product can emerge because no distillation or similar other chemical processes are undertaken by the appellants, such processes do not result into manufacture. In support, they referred to the following judgments reported as ***(i) 2002 (140) ELT A248 (SC), (ii) CCE, Chennai-I v. Metropolitan Transport Company 2008 (224) ELT 603 (CESTAT, Chennai) (iii) Cee Jee Lubricants v. CCE & Customs, Cochin 2010 (251) ELT 439 (CESTAT, Bangalore), (iv)***

Alicid Organic Industries Ltd. V. CCE & ST, Ahmedabad-III 2023 (384) ELT 106 (CESTAT, Ahmedabad) and (v) Southern Refineries Ltd. V. CCE, Thiruvananthpuram 2024 (6) TMI 1038 (CESTAT, Bangalore).

4. *Per contra* learned AR for the Revenue reiterated the findings of the learned Commissioner. He has submitted that, the appellant admitted the allegations levelled in the show-cause notice issued to them in 2011 before the Settlement Commissioner and discharged their duty liability. Therefore, once the matter is settled, accepting the processes undertaken by the appellant on waste oil results into manufacture, subsequent show-cause notices issued to them on the same ground have been correctly confirmed by the Commissioner.

5. Heard both sides and perused the records.

6. The short issue in the present appeal for consideration is whether the processing of the waste oil by the appellant amounts to manufacture and accordingly dutiable.

7. Undisputed facts of the case are that the appellants procured waste oil on payment of duty which are subjected to the process of purification and the resultant oil is sold as pure fuel oil. It is the Revenue's allegation that when the waste oil is subjected to processes such as filtration, purification, distillation, etc., resulting into fuel oil which becomes usable, hence, a new product emerges with different characteristics and accordingly chargeable to excise duty.

8. The issue is no more res-integra and covered by a recent judgment of the Tribunal in the case of ***Alicid Organic Industries Ltd. V. CCE & ST, Ahmedabad-III 2023 (384) ELT 106 (CESTAT, Ahmedabad).***

9. In the said case more or less in similar facts and circumstances where the assessees were engaged in recycling/refining of waste oil/sludge collected from the vessels arriving at the major ports Kandla, Mundra and Ship Breaking yard, Bhavanagar subjected to processes like vaccum distillation, filtration, heating and centrifuging and other process to produce re-usable fuel oil and re-refined used oil; analyzing the issue and the principles of law delivered by various Benches of this Tribunal and Superme Court observed as follows:-

> "***5.7*** *We have also perused the Circular No.1024/12/2016-CX, dated 11.04.2016 on the subject wherein the issue of clarification regarding re-refind 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 ciruclar specifically talks about the lubricating oil obtained from re-refining or reprocessing 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 27 10 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 suggests 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."

10. More or less, a similar view has been expressed by this Tribunal in ***Southern Refineries Ltd. V. CCE, Thiruvananthpuram 2024 (6) TMI 1038 (CESTAT, Bangalore).*** In view of the aforesaid judgments, we do not find merit in the impugned orders, hence same are set aside and the appeals are allowed with consequential relief, if any, as per law.

(Operative part of this Order was pronounced in Open Court on conclusion of the hearing)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Gm/Iss