CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 1380 of 2012

[Arising out of Order-in-Original No. 43/CE/CHD-II/2012 dated 23.02.2012 passed by the Commissioner of Central Excise, Customs and Central Excise Chandigarh II]

M/s Surya Air Products Pvt Ltd ......**Appellant**
A-16, Siel Industrial Estate, Charatrampur, village
Khadauli, P.O. Rajpura, Punjab

VERSUS

Commissioner of Central Excise ST, Chandigarh-II ......**Respondent**
Plot No. 19, Central Revenue Building Sector-17-C
Chandigarh 160017

APPEARANCE:

Shri Sanjay Bansal, Advocate for the Appellant

Shri Yashpal Singh Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60116/2025

DATE OF HEARING: 30.01.2025
DATE OF DECISION: 30.01.2025

S.S.GARG:

The present appeal is directed against the Order-in-Original dated 23.02.2012 passed by the Ld. Commissioner of Central Excise Chandigarh whereby the Ld. Commissioner has passed the following order:

(i) I confirm the demand and order the Noticee M/s Surya Air Products (P) Ltd., A-16, Siel Industrial Estate, Charatrampur, Village Khadauli, P.O. Rajpura (Punjab) to pay Central Excise Duty amounting to Rs. 68,47,721/- (Rupees Sixty eight lacs forty seven thousand seven hundred twenty one only) under section 11A of the Act.

(ii) I order the Noticee to pay interest on the above mentioned recoverable amount of duty, under Section 11 AB of the Act.

(iii) I impose a penalty amounting to Rs. 68,47,721/- (Rupees Sixty eight lacs forty seven thousand seven hundred twenty one only) upon the Noticee M/s Surya Air Products (P) Ltd., A-16, Siel Industrial Estate, Charatrampur, Village Khadauli, P.O. Rajpura (Punjab) under Section 11AC of the Act.

2. Briefly the facts of the present case are that the appellant is engaged in the marketing of Hydrogen Gas Cylinders. The unit of the appellant is adjacent to the manufacturing unit of SIEL Chemical Complex, Rajpura. M/s. SIEL Chemical Complex, Rajpura is engaged in the manufacture of hydrogen gas. The appellant receives 99.9% pure hydrogen gas from SIEL through pipeline at a pressure of 1000 to 1200 mmwc. This gas is filled in returnable gas cylinders with identification marking of the appellant and sold to various consumers. Filling process is done with the aid of filter, dehydration and compressor. Earlier the appellant was registered with the excise

department as manufacturer of excisable goods. In the year 2006, the appellant came to know that some other persons engaged in the filing and marketing of gas cylinders were not paying excise duty to the department and they were registered with excise department only as traders in excisable goods; thereafter, the appellant surrendered their manufacturer's registration and obtained registration as a dealer to operate as a dealer and thereafter Assistant Commissioner granted Central Excise Registration to the appellant to operate as a dealer vide certificate dated 23.02.2007.

2.2 The Revenue entertained the view that the process undertaken by the appellant on the Hydrogen gas received by it from SIEL amounted to manufacture within the meaning of Chapter Note 9 to Chapter Note 28 of the Central Excise Tariff Act. On these allegations, a show cause notice dated 08.10.2010 was issued by the Ld. Commissioner. The appellant filed detailed reply to the show cause notice. After following the due process, the Ld. Commissioner confirmed the demand as cited (Supra). Hence, the present appeal.

3. Heard both the parties and perused the record.

4. Ld. Counsel appearing for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submits that the issue involved in the present case is no longer res integra and this Tribunal in the appellant's own case in Appeal No. E/2363/2011-DB vide Final Order No. 62194/2018 dated 20.03.2018 has held that re-packing of the gas by the appellant

does not amount to manufacture and the demand was set aside. Aggrieved by the said order, the Revenue filed appeal before the Hon'ble Apex Court and the Hon'ble Apex Court vide its order dated 16.07.2024 passed in Civil Appeal No. 2355 of 2019; upheld the judgment passed by this Tribunal by holding that the process including the activities of filling Hydrogen gas cylinders to render the product marketable did not amount to manufacture. Ld. Counsel further submits that in view of the decision of the Hon'ble Apex court, this appeal deserved to be allowed.

5. On the other hand, Ld. AR reiterated the findings of the impugned order.

6. We have considered the submissions of both the parties and perused the material on record as well as the judgment of the CESTAT in the appellant's own case decided on 20.03.2018 in Appeal no. E/2363/2011 and also the decision of the Hon'ble Apex Court in Civil Appeal No. 2355 of 2019 dated 16.07.2024.

7. Further, we find that the issue involved in the present case is identical as was involved in the earlier appeal of the appellant decided by this Tribunal vide its order dated 20.03.2018. The decision of this Tribunal for the earlier period has been upheld by the Hon'ble Apex Court cited (Supra). It is pertinent to reproduce the relevant findings of the Hon'ble Apex Court which is contained in para 8 and 9 and which are reproduced here in below:

> *8. In the instant case, the process involved is that the gas received by the appellant through the pipeline has some accumulation of moisture and in order to remove the same from the gas, the compressor has an inbuilt system of drying the moisture. The treatment employed by the respondent-herein is oil filtration for the removal of moisture from gas by drying the inbuilt system of compressing gas into the cylinders. The said process, in our view, does not amount to a manufacturing process.*
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> *9. In the circumstances, we do not find any merit in the appeal. Hence, the appeal is dismissed. No costs.*

8. In view of our discussion above and by following the ratio of the decision of the Hon'ble Apex Court in the appellant's own case, we are of the considered view that the impugned order is not sustainable in law, therefore, we set aside the impugned order by allowing the appeal of the appellant with consequential relief if any, as per law.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Kailash