CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 2832 of 2012

[Arising out of Order-in-Original No. 68/CE/CHD-II/2012 dated 09.05.2012 passed by the Commissioner of Central Excise, Chandigarh-II]

M/s Royal Tarush Gases **......Appellant**
#42, Focal Point, Opposite Punjab Alkalies Ltd,
Naya Nangal, Distt. Ropar, Punjab-140126

VERSUS

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

APPEARANCE:

Shri Mukesh Pandey, Advocate for the Appellant

Shri Harish Kapoor, 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. 60466/2025

DATE OF HEARING: 27.03.2025
DATE OF DECISION: 27.03.2025

P. ANJANI KUMAR:

Heard both sides and perused the records of the case.

2. The brief issue involved in the instant appeal is as to whether the appellant's activity in compressing the hydrogen gas, received through a pipeline from M/s Punjab Alkalies and Chemicals Pvt. Ltd., into cylinders amounts to manufacture and whether the appellants

are required to pay applicable central excise duty on the same. Revenue issued a show cause notice dated 14.11.2011 alleging that the activity amounts to manufacture and that the appellants are liable to pay central excise duty of Rs.50,59,069/- along with interest and penalty during the period April 2006 to March 2011. Commissioner vide impugned order dated 08.05.2012 confirmed the duty demanded with equal interest and penalty and hence, this appeal.

3. Learned Counsel for the appellants submits that the issue is no longer *res integra*. Hon'ble Apex Court in the case of Surya Air Products in Civil Appeal No.2355/2019 held that the appellant's activity does not amount to manufacture while dismissing the appeal filed by the Department. This Bench in the case of Surya Air vide Final Order No. 60116/2025 dated 30.01.2025 has followed the same. He also relies on Goyal M G Gases Pvt. Ltd. – 2015 (325) ELT 768 (Tri. Del.) and 2018 (361) ELT 921 (Tri. Chd.).

4. Learned Authorized Representative for the Department reiterates the findings of the impugned order.

5. Heard both sides and perused the records of the case. We find that Delhi Bench of the Tribunal in the case of Goyal M G Gases (supra) has gone into the issue at length and held as follows:

> **6.** In this case before going to frame the issue we are recording the activity undertaken by the appellant which is as under :
> The appellant is receiving Hydrogen Gas through pipeline. They compress it and fill it into cylinders at required pressure with the help of compressor run with the aid of power and it is known as compressed hydrogen gas in cylinders. The

compressors installed in the premises compresses the gas at different pressure and finally at the pressure 140kg/cm for filing into cylinders each compressor is oil lubricated. In order to avoid passage of oil into gas the compressors is in built system of oil filtration. The gas received by the appellant through pipeline has some amount of moisture and in order to remove the moisture from the gas the compressor has in built system of drying the moisture. The treatment employed by the appellant is oil filtration, removing moisture by gas by drying by the in-built system of compressing pressure gas into the cylinders. The allegation of the Revenue is that this activity renders the product marketable to the consumer. As the gas received by the appellant through pipeline is not usable or consumable. Therefore, the gas received in pipeline is not marketable to the consumer in the state in which it is received by the appellant. On examining the activity undertaken by the appellant, the issue before us is that "whether the activity of the compressor, oil filtration and removing moisture in gas by drying renders the gas marketable to the consumer" and consequently in terms of Chapter Note 9 of Chapter 28 of the Central Excise Tariff Act, 1985, the activity of the appellant amounts to manufacture or not.

7. To analyse the issue we have examined the Chapter Note 5 of the Chapter 27 of CETA 85 which is reproduced here as under :

"In relation to natural gas falling under Heading 2711, the process of compression of natural gas (even if it does not involve liquefaction), for the purpose of marketing it as Compressed Natural Gas, for use as a fuel of for any other purpose, shall amount to 'manufacture'."

8. On examining the said Chapter Note 5, in Chapter 27, we find that the process of compressor is also amounts to manufacture. Admittedly, in the case in hand as per Chapter Note 9 of Chapter 28 of the CETA, 1985 the activity of compressor does not amount to manufacture. Now the short issue before us whether the activity undertaken by the appellant rendered the product marketable to the consumer or not.

9. The main thrust of the ld. AR is that the appellant is engaged in the activity of packing/repacking from bulk to smaller packs. In fact, that is not the case of the department as per the show cause notice. Therefore, the case laws relied upon by the ld. AR are not relevant to the facts of this case.

10. We have also seen that in the case of *Ammonia Supply Company* (supra), this Tribunal held that Ammonia gas from bulk packing to smaller container will not amount to manufacturing process. Admittedly, in this case the gas from pipeline into cylinders is a similar activity and same shall not amount to manufacturing process.

11. Now the only issue remain before us is whether the activity undertaken by the appellant renders the product marketable to the consumer or not. The said issue has been examined by this Tribunal in the case of *Shivam Industries* (supra) wherein this Tribunal has observed in paras 6 & 7 as under :

"6. There is no dispute about the fact that the appellants purchased duty paid transformer oil in bulk and after filtration and heating used the same for filing the cavities of the transformers being repaired as liquid insulator. According to the department, this process would be covered by the definition of manufacture under Section 2(f)(ii) of Central Excise Act, 1944 read with Chapter Note 4 of Chapter 27 of the Central Excise Tariff.

7. Under Section 2(f)(ii) the manufacture includes any process which is specified in relation to any goods in section or Chapter notes of the 1st Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture. Chapter Note 4 of the Chapter 27 states that in relation to lubricating oil and lubricating preparations of Heading 2710, labelling or re-labelling of containers or repacking from bulk packs to retail packs or adoption of any other treatment to render the product marketable to the consumer shall amount to manufacture. In our views, the word 'consumer' in the expression "adoption of any other treatments to render the product marketable to consumer" would not cover an industrial user or manufacturer who process the transformer oil/lubricants for his own industrial use. In this case, the appellant had subjected the transformer oil purchased by them to the process of filtration and heating to make it suitable for their own industrial use i.e. for repair of the transformers. The process undertaken by the appellant thus, does not amount to manufacture

> and as such the impugned orders are not sustainable. The same are set aside. The appeals are allowed."
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> **12.** We have seen that in the case of *Shivam Industries* (supra) this Tribunal has observed that the adoption of any other treatment rendered the product marketable to the consumer. Admittedly, in this case the consumers are Vanaspati manufacturers who are industrial users or manufacturers. Therefore, the same will not term as consumer.
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> **13.** In fact, they are the processors of the goods. In the case in hand, as the buyer are not consumer as per Chapter Note 9 of Chapter 28 of CETA, 1985. Further, we also hold that the gas is already marketable in its original form and the activity undertaken by the appellant does not render the gas marketable which is already marketable. Therefore, we hold that the activity undertaken by the appellant does not amount to manufacture. Consequently, the appellants are not liable to pay duty.

6. In view of the above, we don't find any merit in the impugned order and consequentially, the appeal is allowed.

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

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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