

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/538 /2006, E/2062/2008 - EX[DB]
E/1675-1576/2009-EX

Date 29/03/2012

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S HINDUSTAN PETROLEUM CORPN.LTD.
SHAKURBASTI TERMINAL, NEW ROHTAK ROAD,
N. DELHI-56
M/S HINDUSTAN PETROLEUM CORPN.LTD.

Appellant

Vs
Respondent

C.C.E. DELHI I

I am directed to transmit herewith a certified copy of **Final order No. A369-372/ 2012 EX[DB]** dated 23-3-12 passed by the Tribunal under **Section 35-C(1) of Central Excises Act, 1944**

b h
Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. DELHI I

C.R. BUILDING, I.P. ESTATE, NEW
DELHI 110002

2. Adv. / Consult

*SH. AMIT DAIN, ADV.,
B-6/10, S.J. ENCLAVE,
N. DELHI-29*

3. C.D.R

4. Bar association. CESTAT. New Delhi

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

6. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, 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. Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

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

11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070

12. Office Copy

13. Guard file

14. *M/S. HINDUSTAN PETROLEUM CORPN. LTD,
NEAR IOC REFINERY, BAHOLI, PANIPAT*

15. *M/S. BHARAT PETROLEUM CORPN. LTD.,
ALINAGAR, MUGHALSARAI, CHANDALI (UP)*

16. *CCE, ROHTAK*

17. *CCE, ALLAHABAD*

b h
Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 23.3.2012

Central Excise Appeal No.538 of 2006 and 2062 of 2008

Arising out of the order in original No.151/2005 dated 22.11.2005 and 21/Commr./SU/08/CE dated 25.6.2008 passed by Commissioner, Central Excise, Delhi/Rohtak.

Central Excise Appeal No.1675 and 1676 of 2009

Arising out of the order in original No.MP (Dem-55 of 08) 27 of 2009 dated 27.2.2009 and MP (Dem-54 of 08) 26 of 2009 dated 27.2.2009 passed by Commissioner, Central Excise & Service Tax, Allahabad.

For Approval and Signature:

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Hindustan Petroleum Corporation Ltd.
Bharat Petroleum Corporation Ltd.

...

Appellants

Vs.

C.C.E., Delhi I/Rohtak/Allahabad

....

Respondents

Present Shri Amit Jain, Advocate for the appellants
Present Mrs. Renu Jagdev, A.R. for Revenue

Coram: Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Technical Member

FINAL Order No. A/369-372/2012-EX (BR)

Per Justice Ajit Bharihoke:

By this order, we propose to dispose of the appeals of M/s Hindustan Petroleum Corporation Ltd. (HPCL) being Appeal No.E/538/2006 and 2062/2008 and two appeals of M/s Bharat Petroleum Corporation Ltd. (BPCL) being Appeal No.E/1675 and 1676/2009 involving similar question of law and facts.

2. The appellants M/s HPCL and BPCL are in the business of marketing of motor spirit and petrol. They purchase duty paid motor spirit/ petrol from refineries and store it at their depots. The petrol and diesel are blended with Multifunctional Additives (MFA) to the extent of 0.04 to 0.06% with a view to enhance the performance of the motor spirit and also to reduce the carbon deposit in the engine. The blended products are sold by HPCL under brand name 'Power', 'Turbojet' and by BPCL under the brand name 'Speed' and 'High Speed Diesel'.

3. The Department was of the view that the blending of MFAs in the diesel and petrol and then selling the final product under a new brand name at a higher rate amounts to manufacture, as such, the final product is subject to levy of excise duty. Accordingly, show cause notices were issued to the appellants and after appropriate hearing, the jurisdictional Commissioner vide impugned orders confirmed the respective demands raised by the show cause notices under Section 11A(1) of the Central Excise Act with interest besides penalty on the appellants under Section 11AC of the Act.

4. Shri Amit Jain, Advocate, learned Advocate on behalf of the Appellants made the following submissions :-

(i) Blending ordinary MS and HSD with small quantity - 0.04% to 0.06% of multi-function additives (MFA) does not result in emergence any new product with distinct name, character and uses. The branded MS and HSD remain MS and HSD

only. The MFA in the branded MS or HSD only improves the engine performance but does not change the basic character of the products. Hence, preparing branded MS or HSD from ordinary MS or HSD does not amount to manufacture.

(ii) In Chapter 27, there is no chapter note to the effect that blending of MS/HSD with MFA will amount to manufacture.

(iii) As per the Board's Circular No. 83/83/94-CX., dated 13-12-94, blending MS with ethanol or menthol does not amount to manufacture. In view of this, blending MS or HSD with MFA to make branded MS or branded HSD will not amount to manufacture.

(iv) The branded MS/HSD are not different from normal MS/HSD. The addition of very small quantity to MFA to MS/HSD to minimize the carbon deposits in the engine, will not amount to manufacture as no new product has emerged. The addition of MFA to MS does not ever change the octane number. If a product is already marketable, any process or further treatment to enhance its marketability or improve the value addition will not amount to manufacture. In this regard, reliance is placed on Tribunal's judgment in cases of (i) *Lakme Lever Ltd. v. CCE* [2001 (127) E.L.T. 790]; (ii) *CCE v. Mysore Ammonia Pvt. Ltd.* [2004 (171) E.L.T. 321]; and (iii) Hon'ble Supreme Court's judgment in case of *CCE v. Sudarshan Chemical Industries* [2002 (146) E.L.T. 19];

(v) Hon'ble Supreme Court in its judgment in case of *J.G. Glass v. UOI* reported in 1998 (97) E.L.T. 5, relying upon its earlier judgment in case of *UOI v. DCM* [1977 (1) E.L.T. (J199) (S.C.)] has held that printing of glass bottles does not amount to manufacture. The ratio of this judgment is applicable to the facts of these cases.

5. Ms. Renu Jagdev, A.R. made the following submissions :-

(i) The additives added to MS/HSD perform the function of removing the carbon deposits from the engine as well as preventing the formation of carbon deposits and

thereby improving the efficiency of the engine. Therefore the branded MS/HSD have name, character and use different from the unbranded MS/HSD.

(ii) Tribunal in case of *Collector of Customs, Madras v. Air Control System*, reported in 1988 (33) E.L.T. 568, has held that blending of very small quantity of "Sodium Hexa metaphosphate" with Polytetra fluorethylene (PTFE), an antifriction substance, also known as Tephguard, which is essential for dispersion, amounts to manufacture. The ratio of this judgment is applicable to this group of cases.

6. We have considered the rival contentions. It is not disputed that the appellants bring duty paid motor spirit and high speed diesel to the depots/installation where part of motor spirit/HSD is blended with less than 1% of MFA and sold them under brand names like 'Speed', 'Power', 'Turbojet', 'High Speed Diesel' etc. The blended motor spirit/HSD are claimed by the appellants to increase the engine efficiency by reducing the formation of carbon deposits and sold it at a high premium. The issue for determination in these appeals is as to whether the process of blending of MS/HSD with small quantity of MFAs i.e. 0.04 to 0.06% in selling them under a new brand amounts to manufacture.?

7. The issue raised in these appeals is no more *res integra*. The same issue came up for determination before CESTAT, New Delhi in the matter of Hindustan Corporation Ltd. vs. C.C.E., Delhi/Rohtak - 2009 (234) ELT 648 wherein it was held that such blending of MS/HSD with negligible quantity of MFAs does not amount to manufacture. The relevant portions of the aforesaid decision is reproduced below:

"4.1 The MS and HSD after being blended with small quantity of MFAs remain MS and HSD only, conforming to ISI specifications IS : 2796 - 2000 and IS : 1460 - 2000 respectively. Just because blending improves their quality and after blending they are sold under different brandnames like 'Speed', 'Power', 'Turbojet' etc. they do not become products different from unblended MS/HSD, with different characteristics and usages. Their characteristics remain the same, as they both have to conform to the ISI specification for unblended MS/HSD and their usage also remain the same. Hon'ble Supreme Court in its judgment in case of CCE v. Sudarshan Chemical Industries (supra) and this Tribunal in its judgments in cases of Lakme Lever Ltd. v. CCE (supra) and CCE v. Mysore Ammonia Pvt. Ltd. (supra) has held that a process or treatment to enhance the marketability of a product or improve the value addition does not amount to manufacture. In this case, the blending only improves the quality of

the MS/HSD resulting in better value addition, without charging the basic characteristics and usages of the products.

4.2 The ratio of the Hon'ble Supreme Court's judgment in case of J.G. Glass v. UOI (supra) in which it was held that printing of glass bottles does not amount to manufacture is squarely applicable to the facts of this case.

4.3 Hon'ble Supreme Court in a series of judgment - South Bihar Sugar Mill v. UOI reported in 1978 (2) E.L.T. J336 (S.C.) and Union of India v. Delhi Cloth Mills Ltd. reported in 1977 (1) E.L.T. J199 (S.C.) and Tega India Ltd. v. CCE reported in 2004 (164) E.L.T. 390 (S.C.) has held that manufacture implies a process, as a result of which a new product with distinctive name, character and usages emerges, that the word 'manufacture' implies change, but every change in raw material is not manufacture and that there must be such a transformation in the raw as a result of the processing that a new and different article with distinct name, characteristics and usages emerges. This criteria of manufacture is not satisfied in this case as, as mentioned above, the MS and the HSD after blending with MFA remain MS and HSD only and except for a brand name being added to their names, there is no change in their basic characteristics and usages. As mentioned above, there is no separate ISI specification for branded MS or branded HSD and both branded as well as unbranded MS/HSD have to conform to the same ISI specifications. Similarly, there is no change in their use. Thus applying the above-mentioned criteria laid down by the Hon'ble Supreme Court as to what constitutes manufacture, the process of blending ordinary MS or HSD with MFA to make branded MS or branded HSD, does not amount to manufacture.

4.4 The Tribunal judgment in case of Collector of Customs, Madras v. Air Control System, Madras, wherein Tribunal has held that blending of Sodium Hexa metaphosphate with Polytetra fluorethylene (PTFE) amounts to manufacture is not applicable to the facts of this case. The issue involved in the case of M/s. Air Control System was as to whether PTFE, which is an anti-friction oil, is a raw material, importable under open general import licence. The contention of Customs Authorities in that case was that it is a finished product. It is in this context that the Tribunal observing that since PTFE is sold only after blending with small quantity of Sodium Hexa Metaphosphate which is dispersal agent and without which it is not usable, held that the blending of PTFE with Sodium Hexa Metaphosphate amounts to manufacture and, therefore, PTFE is a raw material, importable and OGL. The issue involved in the present case is totally different. In the present case, it is not the case of the Respondents that MS/HSD without blending with MFA are not usable. Blending of MS/HSD with MFA to make branded MS/HSD which sell at a premium only improves the quality of the product, and this process, as discussed above, would not amount to manufacture."

8. We find no reason to disagree with the aforesaid conclusion. As such, it is difficult to sustain the impugned orders which are accordingly set aside and the appeals are allowed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

Sed