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# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

## PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

## EXCISE APPEAL BRANCH

Appeal No. E/334 /2010 - EX[DB]    Date **03/05/2012**

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

To :
M/S SHIVAM INDUSTRIES,
SANTOSH NAGAR, LACCHIPUR, GORAKHPUR (U.P.)

**M/S SHIVAM INDUSTRIES,** Appellant

Vs

**C.C.E ALLAHABAD** Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/503-513 2012 EX|DB|** dated 16-4-12 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

**Copy to :**

1. Respondent
**C.C.E ALLAHABAD**
38,M.G.MARG, CIVIL LINES,
ALLAHABAD

2. Adv. / Consult
**MR.S.P. OJHA**
299, BAGHAMBARI HOUSING SCHEME, ALLAHPUR, ALLAHABAD, (UP)

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publictions 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

Assistant Registrar
(Excise Appeal Branch)

P.T.O.-2

14. M/S. SUBHASH TRADERS,
SINGHARIA, GORAKHPUR, (UP)

15. M/S. MARUTI INDUSTRIES,
SANTOSH NAGAR, LACCHIPUR,
GORAKHPUR (UP)

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No. 2, R.K. Puram, New Delhi – 110 066.**
**Principal Bench, New Delhi**

**COURT NO. I**

**DATE OF HEARING/DECISION : 16/04/2012.**

**Excise Appeals No. 334, 336, 340, 2078-2080 of 2010 and 2702-2706 of 2011**

[Arising out of the Order-in-Appeal No. 168,167,166 and 124-126 /CE/Appl/Alld/2009 dated 30/11/2009 and 30/04/2010, No. 165-168/CE/Appl/Alld/2009 dated 15/09/11 and No. 204/CE/Appl/Alld/2011 dated 04/10/11 passed by The Commissioner (Appeals), Central Excise, Allahabad. ]

For Approval and signature :
**Hon'ble Shri Justice Ajit Bharihoke, President**
**Hon'ble Shri Rakesh Kumar, Member (Technical)**

| | | |
|---|---|---|
| 1. | Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? | : |
| 2. | Whether it would be released under Rule 27 of the 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? | : |
| 4. | Whether order is to be circulated to the Department Authorities? | : |

M/s Shivam Industries ]
M/s Subhash Traders ]
M/s Maruti Industries ]
M/s Subhash Traders ]
M/s Shivam Industries ]
M/s Maruti Industries ] Appellants
M/s Maruti Industries ]
M/s Subhash Traders ]
M/s Subhash Traders ]
M/s Shivam Industries ]
M/s Shivam Industries ]

Versus

CCE, Allahabad Respondent

**Appearance**

Shri S.P. Ojha, Consultant – for the appellants.

Shri S.R. Meena, Authorized Representative (DR) - for the Respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
**Hon'ble Shri Rakesh Kumar, Member (Technical)**

Final Order No. A/503 – 513/2012 – Ex(PB) Dated : ____________

**Per. Rakesh Kumar :-**

Since common issue involved in these appeals, the same were heard together and are being disposed of by a common order. The appellants are engaged in the manufacture of HT/LT Coils for transformers and also are engaged in repairing of transformers received from the electricity boards. One of the item required for repair and servicing of transformers is transformer oil, which is purchased by the appellants in bulk. The transformer oil is subjected to the process of filtration under vacuum and heating and, thereafter, the same is used for filing in the cavities in the transformers as liquid insulator. The department was of the view that subjecting the transformer oil to filtration and heating for making it suitable for use in transformers amounts to manufacture in terms of the provisions of Section 2 (f) (ii) of Central Excise Act, 1944 readwith Chapter Note 4 of Chapter 27 of the Central Excise Tariff. On this basis, the show cause notices were issued to the appellants demanding duty on the transformer oil used by the appellants in the repair and servicing of transformers of their customers. The show cause notices were adjudicated by the respective original Adjudicating Authorities who confirmed the duty demands alongwith interest and imposed penalties on them. The appeals filed by the appellants were dismissed by the Commissioner (Appeals). Against these orders of the Commissioner (Appeals), these appeals have been filed.

2. Heard both the sides.

3. Shri S.P. Ojha, Consultant, the learned Counsel for the appellant, pleaded that the processes to which the transformer oil was subjected – filtration and heating to make it suitable for use in the transformers do not amount to manufacture, that the Chapter Note 4 of Chapter 27 according to which in relation to lubricating oils and lubricating preparations of Heading 2710, labelling or re-labelling of containers or repacking from bulk packs and retail packs or the adoption of any other treatment to render the product marketable to consumer shall amount to manufacture, is not applicable to this case as the processes undertaken are meant to make the transformer oil suitable for industrial use i.e. for use in the transformers and not for retail sale, that the Tribunal in the case of **Mineral Oil Corporation vs. CCE, Kanpur** reported in **1999 (114) E.L.T. 166** has held that the reclamation of transformer oil from used transformer oil does not amount to manufacture so as to attract levy of excise duty afresh, that ratio of this judgment of the Tribunal is squarely applicable to the facts of this case, and that in view of this, the impugned orders are not correct.

4. Shri S.R. Meena, the learned Senior Departmental Representative, defended the impugned order by reiterating the findings of the Commissioner (Appeals) and emphasised that in view of Chapter Note 4 of Chapter 27 the processes undertaken by the appellant in respect of the transformer oil purchased by them in bulk would amount to manufacture in terms of the provision of Section 2 (f) (ii) of the Central Excise Act.

5. We have carefully considered the submissions from both the sides and perused the records.

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 readwith 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 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 view, 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.

(Pronounced in open court.)

**(Justice Ajit Bharihoke)**
**President**

**(Rakesh Kumar)**
**Member (Technical)**

PK