

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

**Date of Hearing: 29/8/2018**

**Date of Pronouncement: 20/12/2018**

**Appeal No. E/50763, 51056/2015 & E/51801/2016 (DB)**

[Arising out of Order-in-Original No. JAI-EXCUS-002-COM-32-14-15 dated 29/12/2014 passed by the Commissioner of Central Excise-Jodhpur (Jaipur)]

M/s Focus Energy Ltd. & others

Appellant

Vs.

C.C.E. Jaipur

Respondent

Appearance

Shri Rupesh Kumar ,DR

for the appellant

Shri R.K. Mishra, Advocate

for the respondent

**CORAM: Hon'ble Mr. Anil Choudhary, Member (Judicial)**

**Hon'ble Mr. Bijay Kumar, Member (Technical)**

**Final Order No:53447-53449/2018**

**Per Bijay Kumar**

1. The present appeal is filed against the Order-in-Original No JAI-EXCUS-002-COM-32-14-15 dated 29/12/2014.
2. The issue involved in this case is about the imposition of oil cess and National Calamity Contingent Duty (NCCD), education cess(EC), secondary and higher secondary education cess(SHE) on the "Condensate" which emerges out during the processing of natural gas in their gas plant. The product so obtained is classifiable under heading 2709 00 00 and is being cleared under invoice without paying the aforesaid taxes. This fact of non payment of duty came to light during the scrutiny of ER-1 return filed by

the appellant, and therefore, a show cause notice was issued against the appellant asking them to pay the various taxes as under;

(a) The Central Excise duties including NCCD, E.C. AND SHE amounting to Rs. 1,02,90,987/- be recovered in terms of Section 11A (1) of the Central Excise Act, 1944(for short 'Act') read with section 15 of the Oil Industries(Development) Act, 1974('OIDA' for short);

(b) Interest thereon in terms of section 11AA of the Act, 1944 read with section 15 of the OIDA;

3. The case was adjudicated upon and the demand was confirmed against the appellant.

4. It was submitted by the Ld. Advocate on behalf of the appellant that the oil cess is not leviable on the "condensate", which emerges out during the processing of natural gas on the following grounds:

(1) Ld. Commissioner, while deciding the case failed to understand that impugned order is beyond the scope of Show Cause Notice as the petroleum oil product obtained from bituminous mineral, crude is classifiable under Central Excise Tariff Act (herein after referred to as 'Tariff Act') No. 2709 00 00 of the First Schedule to Tariff Act and attracts levy of 'oil' cess as per the Schedule 15 of (OIDA) and is silent on the actual allegation made in the Show Cause Notices and on this ground itself the Order-in-Original is not sustainable.

(2) The Commissioner has also erred in appreciating that not giving the categorical finding with respect to submission of appellant that the

classification of “Condensate” under Chapter Heading 2709 00 00 of the Tariff is wholly irrelevant for the purpose of levy of cess in the form of Excise duty under Section 15 (1) of OIDA Act. The said section 15(1) of OIDA is only applicable to ‘crude oil and natural gas’ and does not cover the “Condensate” coming out of the processing of Natural gas as by-product as has been claimed in the Show Cause Notice and Order-in-Original.

5. In the impugned order the Adjudicating Authority has held that the “Condensate” is crude oil which is erroneous and incorrect in view of the following chemical characteristic of the two products;

Characteristic	Condensate	Crude Oil
API Gravity	Above 40(47.66)	Below40(30.9)
Specific Gravity at 60/60° F	0.78	0.8358
Density @ 15° C	0.78	0.87
Kinematic Viscosity @ 20° C	1.21	15.2
Sulfur, by wt%	0.00817	1.83
Flash Point, C	More than 11	38
Water Content, ppm	66.15	16.6
Ash Content, wt%	0.06	0.4340
Wax Content by wt%	NIL	23.6

6. Therefore, it was argued that the Condensate and crude oil are the two different products. Further the crude oil is defined under Section 2(e) of the OIDA Act as under;

*“2(e) “Crude Oil” means petroleum in its natural state before it is refined or otherwise treated but from which water and foreign substances have been extracted.”*

*As per the said definition, crude oil means unrefined or untreated petroleum in its natural state from which only water and foreign substances (impurities) have been extracted. Thus, the appellant submits that the said condensate even after removal contain water and foreign substance( Impurities) which straightway takes it out of the purview of the meaning of the term "crude oil" so as to levy cess in the form of duty of excise under section 15(1) of the Act of 1974."*

The schedule referred under **Section 15(1)** of OIDA imposes cess on the following two products.

S.No. of excise	Name of item	The maximum rate at which duty may be collected
1.	2.	3.
1.	Crude Oil.....@....Rupees	one thousand per tonne.
2.	Natural gas.....@.....Rupees	three hundred per Thousand cubic meters

(a) As amended in Finance Bill 1987(clause 108)  
Actual rate of cess on crude oil.

60	w.e.f.	23.07.1974
100	w.e.f.	13.07.1981
300	w.e.f.	15.02.1983
600	w.e.f.	01.03.1987
900	w.e.f.	01.02.1989
1800	w.e.f.	01.03.2002
2500	w.e.f.	01.03.2006
4500	w.e.f.	17.03.2012
20% ad-valorem	w.e.f.	01.03.2016

7. As per the said definition, the crude oil means un-refined, un-treating petroleum in its natural form from which water and foreign substances have been extracted. But in the 'condensate' the water and foreign substances remain therein.
8. It was also submitted that the Commissioner has erred in relying in the definition of 'condensate' as provided by the Ministry of Petroleum and Natural Gas dated 29.11.2017, issued order F.No. Expt-13012(12)/368/2017-EXPL-PNG on the definition of 'condensate' as per classification, which in the concluding part categorically states that "the provisions of this contract shall apply on such condensate as if they were crude oil. This classification is for treating 'condensate' as of crude oil for the purpose of payment of Royalty. This cannot replace the definition of 'condensate' with crude oil under OIDA Act. The letter referred above is reproduced as under;

**F.No. Expl-13012(12)/368/2017-EXPL-PNG**  
**Government of India**  
**Ministry of Petroleum & Natural Gas**

To,  
The Secretary  
Mines and Petroleum Department  
Government of Rajasthan  
Secretariat, Main Building, Jaipur,  
Rajasthan

Subject:- Issue of non-payment of demand of actual royalty on condensate  
Produced from SGL Field (IV Block RJ-ON-6) of ONGC & Focus Energy.

Sir,

I am directed to refer to Government of Rajasthan's D.o. Letter No. F.18(4) Mines/Gr-1/2010 dated 09.01.2017 and 22.06.2017 on the subject and to say that the matter has been examined in the Ministry in consultation with Directorate General of Hydrocarbons. It has been observed that the condensate produced from SGL field is not the wellhead/casing head condensate but produced during subsequent cooling and separation process. Thus, the Royalty paid by ONGC @ 10 % as per notification dated 16.12.2004 is in line with the technical findings.

Yours Faithfully

(Rakesh Mishra)  
Under Secretary to the Govt. of India

9. It was submitted that the Ld. Commissioner came has also erred in relying on the definition of ***M/s Oil India Ltd. vs. CCE, Shillong***, 2002(148) ELT 802 (Tri-Del). The decision of the Tribunal in this case has been regarding the classification of the condensate under Central Excise Tariff. The Tribunal was not deciding the question as to whether the condensate would be treated as crude oil for the purpose of Section 15 of the OIDA Act. The present case revolves around the interpretation of Section 15 read with the Schedule OIDA of 1974.
- 9.1. The Commissioner has further erred in relying upon the case ***Oil India Ltd. vs. CCE, Dibrugarh***, [(06) LCX-0016] to the extent that of perusal of Para 7 of the decision of Hon'ble Tribunal, it has been categorically stated that in this case refers to the classification of condensate under Tariff Act and the issue in the present appeal is not regarding the classification of condensate

in the Schedule in the Customs Tariff Act but under OIDA which is a separate Act.

- 9.2. Similarly, it was impressed upon that the Ld. Commissioner's reliance in the case of *M/s Gail vs. CCE Indore and Vadodara* 2004 (170) ELT 75 (Tri-Del) is also regarding the classification of condensate in the Tariff Act has not relevant in the present matter.
10. The Ld. Advocate relied upon the decision of *Grass land India Ltd. Vs Union of India* 2011(173) ELT (SC), *Bajaj Auto Ltd vs. Commissioner of Central Excise Aurangabad*, 2015(322) ELT 0419 (SC) regarding the fact that the product 'condensate' is not manufactured by the appellant but is coming as the by-product of the processing of natural gas, and therefore, it cannot be treated as manufactured product. Thus the condition manufactures viz. 2(f) 2(d) are not specified in this case.
11. Ld. Commissioner has also erred in holding that of NCCD along with education cess and Secondary and higher Secondary Cess can be demanded in this case. The reliance was placed by the Hon'ble Tribunal's decision in case of *Karial India Ltd. vs CCE Jaipur*, 2015 (315) ELT 612 Gujarat High Court in the case of *sahakari khand udyog* 2008 (232) ELT 61(Tri), wherein it is held that there is no question of charging of interest under Section 15 of the OIDA Act.
12. On the other hand Ld. AR reiterated the findings of impugned order.
13. We have heard parties and perused the appeal records.
14. The issue involved in this case is regarding the levy of oil cess under OIDA Act on the "Condensate" which emerges out of the processing of natural gas.

The oil cess in terms of Section 15 of OIDA, is required to be collected as duty of excise as per the rate the specified item in the schedule. As per the Act the provision of Central Excise and Salt Act, 1944 and Rules made there under, including those relating to refunds and exemption from duty, cess, as far as may be, applied in relation to levy and collection of duty of excise leviable under this Section and for this the provision of that Act shall have affect as if that Act provided for the levy of duty of Excise on all items specified in the schedule. We have also seen the definition of "Condensate" under the Petroleum and Natural Gas Rules, 1954, which read under Rule 3 (ac) as under, "Condensate" means those low vapour pressure hydrocarbons obtained from natural gas through condensation of extraction which are in the form of liquid at normal surface temperature and pressure condition". The crude oil is different under the above Act Section 3 (b) which says "crude oil means petroleum in its natural states in the viscous or sold in the form of refined or other oil treating or water foreign substance has been extracted".

15. We have to see and decide the fact as to whether the "condensate" of which Revenue has imposed duty under OIDA Act and other Acts also falls within the definition of crude oil as held in the impugned order. Ld. Adjudicating Authority has referred to the various case laws and definition adopted by DG Hydrocarbons and OIDA for the terms "condensate" and also characteristic of "condensate" and crude oil extract the definition of crude oil as per the various Acts in question which is relevant to decide the issue. These are;

*“13.8. The term “Crude oil” is defined under Section 2(e) of 1974 Act as under:-*

*“2(e) “crude oil” means petroleum in its natural state before it is refined or otherwise treated but from which water and foreign substances have been extracted.”*

*As per the said definition, crude oil unrefined or untreated petroleum in its natural state from which only water and foreign substances (impurities) have been extracted.*

*13.10. The product with which they are concerned in the present case is “condensate” which is generated in the Natural Gas Processing Plant at surface after the gas so received from the earth’s surface is passed through pressure control valves and Gas Coolers. Though the term “condensate” is not defined under 1974 Act but, the same is defined under Rule 3(ac) of the Petroleum and Natural Gas Rules, 1951(herein referred to as “1951 Rules”) which were made by the Central Government in exercise of the powers conferred by sections 5 and 6 of the Oilfields (Regulation and Development) Act, 1948 which is reproduced hereunder, for ready reference:-*

*3(ac) “Condensate” means those low vapour pressure hydrocarbons obtained from natural gas through condensation of extraction which are in the form of liquid at normal surface temperature and pressure conditions;”*

*Thus, the terms “condensate” refers to those low vapour pressure hydrocarbons in the form of liquid at the normal surface temperature and pressure conditions, obtained from natural gas through condensation of extraction. It is pertinent to mention that the condensation so received in the Natural Gas Processing Plant is first and foremost received while processing the Natural Gas in the Gas Processing Plant. It is vehemently submitted that no condensation is formed at the stage of production or separation at the wellhead. The condensation is generated from the gas while processing the gas at*

*surface production facilities (away from wellhead) due to change in pressure and temperature thus amounting to condensation of natural gas.*

*13.14. A detailed comparison of the characteristic of condensate with crude oil would reveal that the condensate could not be termed as crude oil for the purpose of the Act of 1974. The table comparison condensate and crude oil are detailed as follows:-*

S. No	Characteristic	Condensate	Crude Oil
1.	API Gravity	Above 40(47.66)	Below 40(30.9)
2.	Specific Gravity at 60/60°C	0.78	0.8358
3.	Density at 15° C	0.78	0.87
4.	Kinematic Viscosity at 20° C	1.21	15.2
5.	Sulfur, by wt%	0.00817	1.83
6.	Flash Point, °C	More than 11	38
7.	Water Content, ppm	66.15	16.6
8.	Ash Content, wt%	0.06	0.4340
9.	Wax content by wt %	NIL	23.6

*The abovementioned characteristic would clearly indicate and establish our stand that the product in question is “condensate” and demolishes the allegation made in the Show Cause Notice that the said product is “crude oil”.*

16. In view of above it is evident that under the OIDA Act there are only two entries on which crude oil cess is imposed these are:- (a) crude oil (b) natural gas. It has been accepted by the Ld. Adjudicating Authority that there is no specific mention of “condensate” in the said schedule under OIDA on which the oil cess is imposable but he has relied upon the definition under Section 3 (ac) which says that “condensate” are those low pressure vapour hydrocarbons obtained from natural gas through condensation or extraction

which are in the form of liquid at normal surface and pressure condition. It is also pertinent to mention that “condensate” so obtained from natural gas processing plant is obtained while processing the natural gas as a by-product and not formed at the stage of production or separation of wellhead. These “condensate” generally emerge from the gas, while processing the gas wellhead surface production facilities away from the oil head. It has been inferred in the adjudicating order that the crude oil includes condensate, even though the same has not been specifically mentioned under the OIDA Act. Depending on the rule 3 (ac) of the Petroleum and Natural Gas Rules, 1951, which defines the “condensate” as mentions (supra), similarly the Adjudicating Authority has relied upon the decision in the case of ***Oil India vs. CCE Shillong referred*** (supra) along with the judgment of Hon’ble Adjudicating Authority on ***M/s Oil India vs. Dibrugarh*** 2012 (296) ELT 4. In these judgments the Hon’ble High Courts and Supreme Court have confirmed the classification of condensate under CITH heading 2790 00 00 but with reference to their classification for Central Excise Tariff. In these judgments the applicability of the oil cess under OIDA Act on the “condensate” was not the question before the courts. Ld. Adjudicating Authority has erred in coming to the conclusion that condensate is crude oil and as such consequently the appellants are liable to pay oil cess. We find that Section 15 of OIDA Act imposes oil cess only on two products namely crude oil or natural gas as referred above. The term petroleum product is very very wide and within its ambit covers all the hydrocarbons. If the conclusion of Revenue, is

accepted it will create lot of anomaly and imposition of oil cess even on other product namely, gasoline, asphalt, etc. Had there been any intention of the legislature to tax “condensate” arising out of the processing of the natural gas, the same would have been specifically mentioned in the OIDA Act. It is evident that “condensate” is obtained and received from natural gas processing plant as a by-product where the manufacturing of the aforesaid “condensate” was never intended, thus this question of classification and payment of cess in the form of duty of excise is not leviable although the Adjudicating Authority has referred to Section 2 (f) and 2 (d) of Central Excise Act to claim of imposition of oil cess on the “condensate” as a manufactured product. We find that this conclusion of Adjudicating Authority is erroneous and unacceptable in view of the Hon’ble Supreme Court decision in the case of ***M/s Grassland Industries Pvt. Ltd. vs. Union of India***-2011(273) ELT 10, ***Bajaj Auto Ltd. vs. Commissioner of Central Excise, Aurangabad***-2015 (322) ELT 0419 (SC). We find that the appellant has clearly given the distinction between the chemical characteristic of crude oil and that of “condensate” in their reply which is referred above. In view of different and physical and chemical parameters of two products, it was necessary on the part of the Department to get the expert opinion so as to find the exact chemical nature of “condensate” and as to whether the same could qualify to called as crude oil. We find that no such attempt has been made by the Revenue to obtain the test report to that effect. It has been held in case of ***CCE vs. Calcutta Steel Industries*** [1989(20) ECR-303(SC)] where the chemical nature of the

product is required to be tested for the classification is required to be derived on the basis of test report as per the procedure set under Excise Act. In this case, it is on record that sample has been drawn but test report was not made available to the appellant, which is violation of principal of natural justice. Having not done so, the Adjudicating Authority has wrongly arrived at the conclusion that “condensate” is nothing but crude oil. It is also seen from the impugned order that the Adjudicating Authority has relied upon the definition given by the Director DG hydrocarbon treating the condensate as crude oil. The Adjudicating Authority paid great emphasis on the Report of the Director of DG hydro carbons which is Apex Body under the Ministry of Petroleum & Natural Gas has treated the “condensate” as crude oil for the payment of Royalty equally applicable in case of levy of oil cess on the “condensate”. We are afraid that this conclusion by the Adjudicating Authority is not correct. We have seen the letter issued by the DG Hydrocarbons to the ONGC, and letter is with reference to the charging of Royalty on the ‘condensate’ treating them as crude oil. It is seen from the letter dated 29.11.2017 the copy of which is marked to the DG Hydrocarbon stating that the condensate produced from SGL field is not wellhead, casing head, crude state but during the subsequent cooling and separation process, thus Royalty paid by the ONGC at the time of 10 per cent as per the Notification dated 16/12/2004, is in line with the technical finding. This clarification nowhere mention that the “condensate” is to be given the same treatment under OIDA Act, which is an independent Act passed by the legislature for the development of oil industry.

Accordingly, we are of the opinion that the reliance placed on this letter for purpose of levy of oil cess under the OIDA Act is erroneous. We also find that to much of reliance has been placed on the classification of "condensate" as a petroleum product under the Central Excise Act is not relevant under the OIDA Act as the two Act are independent and for different purpose. Under OIDA Act some of the provisions of the Central Excise Act have been made applicable only with reference to collection of the cess on the product mention therein. The judicial interpretation under one Act is not relevant for the other Act has been held by **Chotabhai Jhethabhai Patel & Co. vs. Union of India-AIR** 1952 Nagpur 139. The tax cannot be imposed by way of implication or presumption as has been done by the Adjudicating Authority in this case. The charging section has to be construed strictly. If a person is not been within the ambit of charging section by clear as he cannot be taxed by way of implication at all. For this we place reliance in case of **Commissioner of Wealth Tax, Gujrat-III Ahemdabad vs. Ellis Bridge Gymkhana-** 1997 (9) SCC 24. We find appellant has made the plea of limitation in this case as the Show Cause Notices has been issued by the Department on 25/3/2015 and the same was received by the appellant on 15/5/2015. The ER-1 returns for the month March, 2015, ER has been filed on 10/4/2014, thus the demand which is for the period March, 2014 to October, 2014, is time barred as no extended the period has been invoked in the Show Cause Notices. In this case the Show Cause Notice is issued under the provisions of Section 11A(1) of the Act thus the demand is time barred as no extended period of limitation has been

invoked in the Show Cause Notice dated 25.3.2015. The Show Cause Notice invoked the provisions of Section 11 A(1) of Central Excise Act, 1944 read with Section 15 of Oil Industries Development Act. Therefore, we also conclude the demand is also time barred for this we place reliance on the decision of Hon'ble Tribunal in the case of **Magara Industries Pvt. Ltd. vs. Commissioner of Customs New Delhi** 2006 (202) ELT 244 (Tri-LB). We, therefore, hold that the oil cess is not leviable on the "condensate" and under OIDA either on merits or also on limitation. Accordingly, we set aside the impugned demand and allow the appeal. Further the demand of oil cess is there is not leviable no question of imposition of any other duties.

17. Accordingly, we allow the appeal along with consequential benefit if any.

(Pronounced in open court on 20.12.2018)

(Anil Choudhary)  
Member(Judicial)

(Bijay Kumar)  
Member(Technical)

Tejo