

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court - I

Appeal No.	Appellant	Respondent	Impugned Order No. & Date
E/186/2010	ATMA Petrochemical Products Limited	CCCE&ST, Guntur	O-I-O No. 24/2009-CE (C), dt. 20.10.2009 passed by CCCE&ST, Guntur.
E/187/2010	Sri Venkateswara Rao	.do.	.do.
E/188/2010	N. Srinivasa Rao	.do.	.do.
E/300/2010	CCCE&ST, Guntur	ATMA Petrochemical Products Ltd.	.do.

Appearance

Shri K. Nagaraja Rao, Advocate for the Appellant.

Shri Guna Ranjan, Suprintendent/AR for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 26.09.2018
Date of Decision: 26.09.2018

FINAL ORDER No. A/31334-31337/2018

[Order per: P.V. Subba Rao]

1. All these appeals arise out of the same order. Appeal No. 300/2010 is preferred by Revenue against some abatements and deductions allowed by the Commissioner in his Order-in-Original while the other appeals are by the assessee against the order challenging the leviability of excise duty on

the products and by the officers of the assessee against the personal penalties imposed on them.

2. Heard both sides and perused the records. The assessee appellant procured used lubricant oil from many refineries and Indian Oil Corporation which they repacked and sold including some after blending and some after addition of additives, heating and filtering. The relevant period is 1994-95 and 1997-98. Show cause notices were issued alleging that these activities will amount to manufacture under section 2(f) of Central Excise Act, 1944 and therefore demanding central excise duty. It is also proposed to confiscate the goods that were seized and to impose penalties. After the first round of litigation, in the impugned denovo order, demands have been confirmed alongwith interest and penalties were imposed. The Revenue's appeal is on the short point of abatement and deductions given to the appellant by the Commissioner and extending the benefit of MODVAT credit. The assessee's appeals are on the ground that these activities do not amount to manufacture and hence no duty liability arises.

3. Ld. Counsel for the appellant assessee submits that there was a search in their factory on 27.02.1998; lubricant oil was seized at their factory in Vijayawada and their Depot in Hyderabad on the allegation that they have evaded payment of central excise duty on the following activities.

- a) Purchase of virgin oil, which is blended with additives, heated and filtered and packed.
- b) Reclamation of lubricant oil from used oils for heating, cleaning, filtration and packing.
- c) Procurement of gear oil, heating it to remove moisture, filtering and packing.

He submits that the show cause notices pertain to these activities. He explained that all these activities are definitely processes which bring into the market a new product suitable for sale but this process by themselves do not amount to manufacture as per law applicable during the relevant period. He submits that in the year 2000, new chapter note '9' was added to chapter 27 of the Central Excise Tariff as follows:

"9. In relation to lubricating oils and lubricating preparations of heading No. 27.10, labeling or relabeling of containers and repacking from bulk pack to retail packs or the adoption of any other treatment to render the product marketable to the consumer shall amount to "manufacture."

Before the introduction of this chapter note to Chapter 27, these processes, evidently did not amount to manufacture and a legal fiction was, therefore, created. He further submits that subsequently this chapter note was renumbered as chapter note '4'. A clarification was also issued by CBEC vide circular No. 1024/12/2016-CX, dated 11.04.2016, relevant portion is as follows:

" Manufacture

.4. Waste oil after processing may become lubricating oil but this process would not amount to manufacture in view of the judgement of Tribunal in case of Collector vs Mineral Oil @ The Institute of Chartered Accountants of India A-82 FINAL EXAMINATION: NOVEMBER, 2016 Corporation [1999(114) ELT 166] upheld by Hon'ble Supreme Court [2002(140) ELT 248(SC)]. However, the issue also needs to be examined in light of Chapter Note 4 of Chapter 27 which was inserted in the Central Excise Tariff by the Finance Act, 2000.

.5.1. Chapter Note 4 of Chapter 27 is a deeming fiction on manufacture and provides that:

"In relation to the lubricating oils and lubricating preparations of heading 2710, labelling or re-labelling of containers and re-packing from bulk pack to retail packs or the adoption of any other treatment to render the product marketable to the consumers, shall amount to manufacture."

.5.2. This Chapter note applies only to "lubricating oils and lubricating preparations of heading 2710". Other goods falling under CETH 2710 are not covered by the Chapter Note. The deeming fiction provides that when one of the process listed in the chapter note is carried out on lubricating oil or lubricating preparations, it shall be deemed to be manufacture. These processes are-

- (i) Labelling or re-labelling of containers.*
- (ii) Re-packing from bulk pack to retail packs.*
- (iii) Adoption of any other treatment to render the product marketable to the customers."*

4. He, therefore asserts that it is no longer in dispute that these processes became manufacture by virtue of chapter note which was added in 2000 and not before. He relied on the case of Indian Oil Corporation [2015(324) ELT 633 (SC) in which Hon'ble Supreme Court held that repacking of lubricating oils into smaller packs does not amount to manufacture till the introduction of chapter note w.e.f. 01.03.2000. He also relied on the judgment of Hon'ble Supreme Court in the case of Mineral Oil Corporation [2002(140) E.L.T. A248 (S.C.)] in which Hon'ble Supreme

Court upheld the decision of the Tribunal that the reclamation of transfer oil from used transformer oil does not amount to manufacture. He also relied on the following other case laws, which held the same position:

- (a) CCE vs. Crescent Chemical Corpn. [1990(48) ELT 458 (Trib.)]
- (b) Bangalore Petroleum & Chem. Pvt. LTd. [2000(119)ELT690 (Trib.)]
- (c) Cee Jee Lubricants vs. CCE&C, Cochin [2010(251)ELT 439 (Tri-Bang.)]

5. In view of the above, Ld. Counsel argued the processes which they had undertaken does not come under manufacture and no excise duty is leviable on those activities and hence the demand as well as interest and penalties are liable to be set aside.

6. Ld. DR reiterated the order in original but argued that the abatements, cum duty benefit and MODVAT benefit were wrongly allowed by the Commissioner. He relied on the case of Empire Industries Limited [1985(20) ELT 179 (S.C)] in which Hon'ble Apex Court held that transformation of an object into a different commercial commodity is sufficient to constitute manufacture under section 2(f) of Central Excise Act. He argued that in the light of this judgment of Hon'ble Supreme Court, the activities undertaken by the appellant assessee would amount to manufacture even during the relevant period, as a new commodity as known to the market viz; lubricating oil under the brand name ATMA had

come into existence and therefore the assessee's appeal need to be rejected and the department's appeal may be allowed.

7. We have examined the arguments on both sides and perused the records. It is not in dispute as to what activities were undertaken by the appellant. These include packing, repacking, filtering, cleaning, heating etc. of lubricating oils after which they were sold under the own brand name of the appellant assessee. The short question to be decided is whether these activities amounted to manufacture during the relevant period i.e. prior to the introduction of chapter note 9 to chapter 27 of the Central Excise Tariff. Evidently, if these activities already amounted to manufacture there would have been no need to introduce the aforesaid chapter note creating a legal fiction that labelling, relabeling and repacking and adopting any other treatment to render the product to the consumer as manufacture. This chapter note was subsequently renumbered as chapter note 4. It has been clarified by CBEC in their circular dt. 11.04.2016 (supra) that these activities amount to manufacture. Further, in the case of Indian Oil Corporation (Supra), Hon'ble Supreme Court has clarified that repacking of lubricating oils does not amount to manufacture and in case of Mineral Oil Corporation (supra), the Tribunal held that reclamation of transformer oil from used transformer oil does not amount to manufacture. In the case of Bangalore Petroleum & Chem. Ltd. the Tribunal has held that purification and refining of these oils do not amount to manufacture. Respectfully, following the decision of Hon'ble Apex Court and the Tribunal

of Bangalore Bench on similar cases, we hold that the assessee appellant's activities did not amount to manufacture during the relevant period and therefore no duty is liable to be paid. Consequently, the question of interest and penalties, fine and confiscation do not arise. We, therefore, find that Revenue's appeal is liable to be rejected and the assessee's appeals are liable to be allowed and the impugned orders are liable to be set aside and we do so.

8. Assessee's appeals No. E/186/2010, E/187/2010 and E/188/2010 are allowed and Revenue's appeal No. E/300/2010 is rejected.

(Operative portion of the order pronounced in open court on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)