IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No. E/412,416,417,418/09 And E/310&311/10

(Arising out of Order-in-Appeal Nos. 11-14/SLG/09 dated 17.04.2009 passed by the Commissioner (Appeals), Central Excise, Kolkata and 04-05/SLG/2010 dated 29.01.2010 passed by the Commissioner (Appeals), Central Excise, Siliguri).

Commissioner of Central Excise, Siliguri Appellant (s)

Vs.

M/s. I.O.C. Ltd. Respondent (S)

Appearance:
Shri A. K. Biswas, Suptd. (A. R.) for the Revenue
Shri Sushil Santra, Chief Manager (Taxation) for the Appellant (s)

CORAM:
HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI BIJAY KUMAR, MEMBER (TECHNICAL)

Date of Hearing: -12.07.18
Order No. FO/76554-76559/2018

PER SHRI P.K.CHOUDHARY

Briefly stated the facts of the case are that during the period from 06/09/2004 to 31/07/2007, M/s. Indian Oil Corporation Limited, the Respondent herein, had Terminal at Siliguri in West Bengal. The said Terminal procured duty paid High Speed Diesel (HSD) from refineries on payment of Excise Duty and stored the same in the tank for local dispatch. Out of total receipt, only a fraction was mixed with Additive called Multi Functional Fuel Additive (MFA) and sold as Xtra Mile Super Diesel as a branded fuel. Mixture was made in the ratio 1:2500 i.e. 1 ltr Additive was added with 2500 ltr of diesel. As the subject product was sold on higher rate, department asked the respondent Company to pay differential duty and issued Show Cause Notices, which were adjudicated confirming the demand.

2. On appeal, the Ld. Commissioner (Appeals) set aside the Adjudication Order and allowed the appeal filed by the Company. Now, Revenue is in appeal before the Tribunal against the impugned orders.

3. The Ld. DR reiterates the grounds of appeal and submits that the mixture is nothing but a manufactured product.

4. The Ld. Chief Manager (Taxation) appearing on behalf of the Respondent-Company submits that the process undertaken cannot be termed as manufacture and also submits that his contentions are supported by the test results against sample drawn which clearly shows that there was no quality difference between the HSD without Additive and with Additive as per standard specification of HSD except the Sulphur content becomes lower after mixing with Additive. It is his submission that all vehicles whether new or old can use this mixed HSD (Branded). Further, none of the car manufacturers recommends a particular type of HSD for any new generation Car.

5. The Ld. Representative strongly argued that after mixing the Additive to HSD, no new product/HSD is coming into existence. He relied upon the following decisions:

(i) Bharat Petroleum Corporation Ltd. Vs. Commissioner of Central Excise, Lucknow, reported in 2009(240)ELT403

(ii) Commissioner V. Hindustan Petroleum Corporation Limited, reported in 2015(317)E.L.T.A158 (Supreme Court).

6. Heard both sides and perused the appeal records.

7. I find that the issue is no more res-entigra in view of the Tribunal's decision in Hindustan Petroleum Corporation Ltd. Vs. CCE, Delhi & Rohtak reported in 2009(234)E.L.T.648 whereby the Tribunal, has held that a

process or treatment to enhance the marketability of a product or to improve the value addition does not amount to manufacture. The relevant paragraphs of the said decision are reproduced below.

> ***"4. We have carefully considered the submissions from both the sides. The appellants bring duty paid MS and HSD to their Depots/Installations where a part of such MS/HSD is blended with MFAs and sold as branded MS/branded HSD under brandnames like "Speed", "Power", "Turbojet" etc. The branded MS/HSD are claimed by the Appellants to increase the engine efficiency by reducing the formation of carbon deposits and accordingly are sold at a premium. The point of dispute in this group of appeals is as to whether the process of blending ordinary MS/HSD with very small quantity of MFAs (0.04% to 0.06%), to make branded MS/HSD amounts to manufacture. After considering the rival contentions on this point, we, for the reasons to given below, hold that this process does not amount to 'manufacture' and hence would not attract any central excise duty.***
>
> ***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 : 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."***

8. In view of the above discussions, I do not find any reasons to interfere with the impugned orders and the same are accordingly, sustained. The appeals filed by the appellants are dismissed.

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

Sd/-	**Sd/-**
(BIJAY KUMAR)	**(P.K. Choudhary)**
Member (Technical)	**Member (Judicial)**

Pooja