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

Appeal No. E/576/2009

(Arising out of Order-in-Original No. 17/MP/Ayukt/2009 dated 31/07/2009 passed by the Commissioner of Central Excise, Patna.)

M/s. I. O. C. Ltd. Appellant (s)
Vs.

Commissioner of Central Excise, Patna
Respondent (S)

Appearance:
Shri Bimalendu Biswas, GM (Finance) & Hemant karnani Adv. for the Appellant (s)
Shri S. S. Chattopadhyay, Suptd. (A. R.) for the Revenue

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

Date of Hearing: -24.01.2019

Order No. FO/75092/2019

PER CORAM

The facts of the case in brief are that M/s. Indian Oil Corporation Limited, had depot at Raxaul. The appellant herein, was receiving duty paid products from their Barauni Refinery during the period from January 2008 to April 2008. Show Cause Notice dated 09/01/2009 was issued on the ground that the appellant assessee are also engaged in the manufacturing of Xtra Mile Super Diesel and Xtra-premium MS by the process of blending of HSD and MS with multifunctional additives (MFA). The Show Cause Notice alleged evasion of payment of Central Excise Duty holding the above process as manufacture.

2. The Adjudicating Authority confirmed the demand under Section 11A (2) along with interest and imposed a penalty of equal amount under Section 11 AC read with Rule 25 of the Central Excise Rule, 2002. Hence, the present appeal before the Tribunal.

3. The Ld. Representative (GM finance) appearing on behalf of the appellant company submits that the process undertaken cannot be termed as manufacture and also submits that Xtra Mile Super Diesel and Xtra Premium MS are prepared by ad-mixing high concentration additives with high Speed Diesel and Motor Spirit received from their Refinery and by processing the same by extra treatment to make the product more effective and marketable. The process of blending of additives with HSD received from BRPL Refinery did not amount to manufacture since, no new product with different name, character and use came out of the processe. Further, the process of adding the additive is not a process which is incidental or ancillary to the completion of the final product.

The Ld. Representative further contended that there was no quality difference between the HSD without additive and the HSD with additive as per standard specification of HSD except for the Sulphar content which gets reduced after mixing with the additive. It is his submission that all vehicles whether new or old can use this mixed HSD and MS (branded). Further, none of the car manufacturers recommended a particular type of HSD or MS for common new generation car.

4. The Ld. DR contended that the mixing is nothing but manufacture. He reiterated the discussion and findings of the impugned order.

5. Heard both sides and perused the appeal records.

6. 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."*

7. In view of the above discussions, the impugned order cannot be sustained and accordingly, the same is set aside. The appeal filed by the appellant is allowed with consequential relief, if any.

Sd/-	Sd/-
(V. PADMANABHAN)	**(P. K. CHOUDHARY)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Pooja