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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.977 of 2011

(Arising out of Order-in-Appeal No.30/DIB/CE(A)/GHY/11 dated 30.08.2011 passed by Commissioner(Appeals) of Customs & Central Excise, Guwahati.)

Commissioner of Central Excise, Dibrugarh
(Dibrugarh, Assam.)

...Appellant

VERSUS

M/s.GAIL (India) Limited

.....Respondent

(LPG Recovery Plant, Lakwa, Sivasagar, Assam.)

APPEARANCE

Shri T.Mondal, Authorized Representative for the Appellant (s)
Shri M.P.Bagaria, Chartered Accountant for the Respondent (s)

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

FINAL ORDER NO. 75650/2020

DATE OF HEARING : 14 October 2020
DATE OF DECISION : 14 October 2020

P.K.CHOUDHARY :

M/s.GAIL (India) Limited, the respondents, engaged in production of LPG and Solvex-GL have availed duty exemption under Notification No.33/99 dated 08.07.1999 as amended from March 2000 onwards for the goods produced. As per the Notification, the respondents have been filing refund claim by the 7th of subsequent month. The original authority i.e. Deputy Commissioner, Jorhat Division sanctioned the refund of Rs.18,65,212/- vide refund order dated

08.07.2009. The department being aggrieved, filed appeal before the lower appellate authority. The learned Commissioner(Appeals) upheld the refund order dated 08.07.2009 and rejected the appeal. Hence the present appeal before the Tribunal on the following grounds.

(1) Whether the Commissioner(Appeals) Order-in-Appeal No.30/DIB/CE(A)/GHY/11 dated 30.08.2011, vide which he rejected Order-in-review no.25/COMMR/DBR/09 dated 18.11.2009 and upheld Order-in-Original No.R-11/2009-10 dated 08.07.09 passed by the Deputy Commissioner, Central Excise, Jorhat, is correct in propriety as well as in legality?

(2) Whether the Commissioner(Appeals) is right in holding that Review Commissioner's view that Solvex-GL, being gas is excluded from sub-serial No.13(i) of the schedule to the Notification No.33/99 CE dated 08.07.1999 as amended, is eccentric, irrational and egregious?

2. Learned Authorized Representative appearing on behalf of the appellant Revenue submits that Solvex-GL is a liquid and not gas, as such it is not covered under Sl.No.13(i); it is also not covered under any other entry of the schedule to the Notification No.33/99 dated 08.07.1999; under Sub-Sl.No.13(i) 'gas exploration and production' has been specified under sub-Sl.No.(ii) to (xii). Different other products, which are manufactured out of Petroleum gas as basic starting raw material has been specified; Sub-Sl.No.13(i) refers to gases only i.e. items which are gaseous at a standard/normal temperature and pressure; therefore Solvex GL, which is not gaseous and is not covered under the exemption Notification.

3. The Learned Authorized Representative also submitted the following:-

(1) Gas based intermediate products have been specified at Sl.No.13 of schedule to the Notification No.33/99 dated 08.07.1999 as amended, to be eligible for exemption. Under sub-

serial No.(i) Gas exploration and Production has been specified. Under sub-Sl.No.13(ii) to (xii), different products which are manufactured out of Petroleum gas as basic starting raw material has been specified.

(2) Sub-serial No.13(i) refers to gas only, i.e., items which are gaseous at standard/normal temperature and pressure. The items which are not gaseous at STP/NTP do not fall under Sub-Sl.No.13(i) and hence exemption is not available to such items in terms of the notification.

(3) Solvex-GL is a mixture of naturally occurring bydrocarbon which is liquid at STP/NTP. The assessee classified Solvex-GL under 27101113 of CETA, 1985. This sub-heading covers "special boiling point spirit". As per supplementary chapter notes of Chapter 27, these meant light oils, not containing anti knocking preparation, and with difference of not more than 60 degree centigrade between the temperature at which 50% and 90% by volume (including lost) distill. Petroleum gases are classified under heading No.2711 of CETA, 1985. As such, Solvex-GL is not a gas and therefore, its exploration and production is not covered under Sub-sl.No.13(i) of the schedule to the notification under reference.

(4) It therefore follows that, Solvex-GL does not satisfy the description of the products under serial No.13(i) of the schedule to the Notification No.33/99-CE dated 08.07.1999, as amended and is not eligible for exemption and consequential refund.

(5) The sub-serial No.13(i) of the schedule to the impugned Notification refers to gas exploration and production. The assessee is engaged in the production of gas out of natural gas purchased from Oil India Limited, Duliajan. It appears from the wordings of the Notification that to be covered under sub-serial No.13(i) of the schedule to the Notification, the product should essentially be a gas. Had it not been so, the itemization of other

products under sub-serial No.13(iii) to 13(xii) of the schedule would not have arisen.

4. Learned Counsel appearing on behalf of the respondents submits as under:-

(1) The respondent claims exemption on LPG and Solvex-GL under Notification No.33/99-CE dated 08.07.1999 (hereinafter referred to as the "said notification"). The said Notification grants exemption by way of refund – the respondent first pays excise duty and then gets refund of the duty paid from PLA. The said Notification exempts specified excisable goods, which includes 'Gas based intermediate products'. 'Gas based intermediate products' appears in Serial No.13 of the Schedule to the said Notification. Under this Serial number there are twelve entries. These entries include not only activities, such as, 'gas exploration and production', 'gas distribution and bottling', 'power generation' but also solid and liquid substances, such as, 'plastics', fertilizers', 'yarn raw materials', 'nitric acid and ammonium nitrate'.

Copy of the Notification No.33/99-CE dated 08.07.1999 is annexed and marked as Annexure-R-1

(2) Under Serial No.13, the first entry is 'gas exploration and production'. Under this entry, the Respondent claims exemption on LPG and Solvex-GL. There is no dispute about exemption on LPG because the department allowed exemption on LPG after the Committee of Disputes (COD) had refused permission to the department to challenge Commissioner(Appeals)' order dated 03.07.2002 granting exemption to LPG. The present dispute is whether Solvex-GL is covered under the first entry of Serial No.13 and is eligible for exemption.

(3) Solvex-GL produced during the production of LPG from natural gas and is used as raw materials in paints and rubber industries. Its process of manufacture is as follows. Natural Gas is compressed at a high pressure and after compression it is

expanded to achieve a very low temperature & within this process the natural gas gets liquefied. The liquefied gas is then brought to the distillation columns wherein both the products get separated in the same column as intermediate products of natural gas. LPG being lighter than the Solvex-GL is recovered from the top of the column whereas Solvex-GL is recovered from the bottom.

Natural gas mainly comprises C1, C2, C3, CR, C5, C6+ including small portion of N2, CO2, etc. wherein LPG comprises of C3 & C4 and Solvex-GL comprises mainly C5 & C6. At standard temperature and pressure LPG is gas, but Solvex-GL is liquid.

Copy of the Process Flow Diagram annexed and marked as <u>Annexure-R-2</u>

(4) Solvex-GL is covered under Serial No.13, entry (i) of the said Notification because it is a gas based intermediate product. It is gas based intermediate product because it arises from natural gas and is used as raw materials in paint and rubber industries. On this understanding of the law, the Respondent claimed exemption on Solvex-GL by way of filing several refund claims including refund claim for Rs.19,21,170/- (excise duty plus education cesses) for the month of May, 2009.

(5) By an order dated 08.07.2009, the Assistant Commissioner granted refund of Rs.18,65,212/- to the respondent under Notification No.33/99-CE dated 08.07.1999 as amended vide Notification No.18/2008-CE dated 27.03.2008 (Sl.No.16 of the table). The Assistant Commissioner while granting the said refund held that Solvex-GL is eligible for exemption under Serial No.13 entry(i) of the schedule to the Notification No.33/99-CE dated 08.07.1999. He also relied upon the Order No.45/08-09 dated 19.06.2008 passed by the Assistant Commissioner, Central Excise, Jorhat in this regard. But he restricted the refund to excise duty only.

Copy of the refund order dated 08.07.2009 is annexed and marked as Annexure-<u>R-3.</u>

5. Heard both sides through video conferencing and perused the appeal records.

6. We find that the issue which arises for consideration by this Bench is whether in the facts and circumstances of the case, the respondents are eligible for the exemption under the aforesaid Notification No.33/99-CE dated 08.07.1999.

7. We find that the matter is essentially technical in nature and reference to the manufacturing process is necessary for a proper appreciation of the issue. We find from records that M/s GAIL submitted that LPG as well as Solvex GL are two inter-mediate gaseous products of processed natural gas stored under pressure as liquid; natural gas is compressed to a high pressure and after compression it is expanded to achieve a very low temperature and in the process the natural gas gets liquefied; the liquefied gas is then brought to the destination column wherein both the products i.e. LPG and Solvex GL are separated; whereas LPG being lighter is collected from the top of the column and Solvex GL is recovered from the bottom; natural gas normally comprises of C-1, C-2, C-3, C-4, C-5, C-6 + and includes small portion of N_2, CO_2 etc.; whereas LPG comprises of C-3 & C-4, 'Solvex GL' comprises of mainly C-5 and C-6; therefore both LLPT as well as Solvex GL are the two intermediate gaseous products of processed natural gas being recovered and stored under pressure as liquid.

8. We find that the Notification No.33/99 provides for exemption to goods specified in the schedule appended to the Notification and cleared from a unit located in the state of Assam or Tripura or Meghalaya or Mizoram or Nagaland or Arunachal Pradesh as the case may be, from so much of the duty of excise, leviable thereon, under any of the said acts as is equivalent to the amount of duty paid by the manufacturer of goods from the account current maintained under Rule

9 read with Rule 173 G of the Central Excise Rules, 1944. Schedule to the Notification at Sl.No.13 is as follows:-

13. Gas based intermediate Products
- *(i) Gas based Intermediate Products*
- *(ii) Gas Distribution and Bottling*
- *(iii) Power Generation*
- *(iv) Plastics*
- *(v) Yarn Raw Materials*
- *(vi) Fertilizers*
- *(vii) Methanol*
- *(viii) Formaldehyde and FR Resin Melamine and MF Resin*
- *(ix) Methylamine or Hexamethylene Tetranine or Ammonium Bi-Carbonate*
- *(x) Nitric Acid and Ammonium Nitrate*
- *(xi) Carbon Black*
- *(xii) Polymer Chips*

On perusal of the schedule it is apparent that the exemption is available to the gas based intermediate products. Sub-Sl. No. 13(i) of the schedule relates to gas exploration and production. Whereas Sl.No.13 mentions about gas based inter-mediate products. Sub-Sl. No.(i) refers to gas exploration and production. It is evident that the schedule not only refers to certain products but also to certain processes. The only inference one can get is that the products generated in the processes mentioned are covered by the entry and are eligible for exemption. Going by the manufacturing process given by the respondents and not disputed by the Revenue, we find that Solvex GL is manufactured during the process of production of LPG gas which is subsequently bottled and sold. The plea taken by the department that the exemption is applicable only to gas based products appears to be farfetched; the word ‘gas based intermediate products’ has to be understood to mean the products or the intermediate products generated during the exploration and production of ‘gas based products’. It is not the case of the department that the impugned products i.e. Solvex GL is not produced during the production /manufacture of LPG. Under such circumstances the exemption cannot be restricted to products which are formed in the gaseous stage alone for the reason that the exemption refers to gas based intermediate products and gas exploration and production. The correct interpretation of gas based products would go to include all the products which are produced in the processes of production of gas/LPG. The argument taken by the appellants appears to be farfetched for the reason that even LPG for which the exemption was extended by the department is also in the bottle and sold in the liquefied form. We find that the arguments of the learned Authorized Representative on the issue that while LPG is produced after liquefaction of gas and Solvex GL is produced or occurs in liquid form naturally is not acceptable.

9. We are of the considered opinion that the Notification does not give any such interpretation. It is clear that the entry 13 of the schedule refers to certain products which are not gaseous in nature. The main heading 'gas based intermediate products' has to include all the products intermediate or finally produced or occurring or manufactured in the process of exploration and production of gas. The distinction that the department is trying to bring in between liquids and gases is not acceptable. The products mentioned at Sub-Sl. Nos. of Sl.No.13 to the schedule to the Notification are not gases. If one takes the view that the exemption is only applicable to products occurring in gaseous state are alone eligible for exemption to the items like plastics, fertilizers. Ammonium Nitrate etc. would not have formed a place in the list of the products made to be eligible for the Notification. Therefore an appropriate reading of the Notification would give an understanding that the main activity referred to therein is gas exploration and products which emerge as finally or intermediately in the process are eligible for exemption. As the wordings of the Notification are very clear, no two interpretations are available and as such the case law cited by the learned Authorized Representative are of no avail.

10. In view of the above, we find that the Notification squarely covers the impugned product and the benefit of the same is available to the

respondents. In view of the above, the appeal filed by the department is liable to be rejected on merits.

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

SD/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

SD/
(P.ANJANI KUMAR)
MEMBER (TECHNICAL)

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