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

**Excise Appeal No. 349 of 2011**

(Arising out of the Order-in-Appeal No. 36/Kol-VII/2011 dated 21.02.2011 passed by Commissioner of Central Excise, Kolkata.)

**M/s Forma Chem Pvt. Ltd.,**
276, B.B. Ganguly Street, Kolkata-700012.

**...Appellant (s)**

*VERSUS*

**Commissioner of Central Excise, Kolkata.**
Bamboo Villa, 169, AJC, Bose Road, Kolkata-700014.

. ...**Respondent(s)**

**APPERANCE :**
Shri N. K. Chwdhury, Advocate for the Appellant
Shri J. Chattopadhyay, Authorized Representative for the Respondent

**CORAM:**
**HON'BLE MR. ASHOK JINDAL MEMBER (JUDICIAL)**
**HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)**

**FINAL ORDER No...76298/2023**

DATE OF HEARING : 25.07.2023
DATE OF DECISION : 25.07.2023

**PER K. ANPAZHAKAN :**

The issue involved in the present appeal is classification of the goods namely CMO (Crude Mineral Oil) Residue manufactured by the Appellant, whether it is appropriately classifiable under the Chapter Heading 27090000 as contended by the Appellant or under 27139000 as contended by the department.

2. The facts of the case in brief are that the Appellant imported 32 containers of Crude Mineral Oil (CMO) falling under sub-heading No. 27090000 for manufacture of Light Diluted Oil (LDO) on mixing with indigenous product purchased from local market. LMO were cleared on payment of appropriate duty by classifying the same under the Tariff Sub-heading No. 2710.99 and

CMO Residue was cleared on payment of 'Nil" rate of duty by classifying it under the Tariff Sub heading No. 27090000.

3. The Appellant was issued with a Show Cause Notice dated 30.12.2009 demanding duty of Rs, 3,69,020/- along with interest and penalty, on the CMO Residue cleared during the period 01.02.2009 to 31.10.2009 . It was alleged in the said Show Cause Notice that the Appellant has mis-classified the CMO Residue under the Chapter Heading 27090000 instead of 27139000. The Notice was adjudicated vide Order-in-Original dated 10.03.2010, wherein the demand raised in the Notice was confirmed along with interest and penalty. On Appeal, the Commissioner (Appeals) upheld the demands vide his Order-in-Appeal dated 21.02.2011. The Appellant filed the present appeal against this impugned order.

4. In their grounds of appeal, the Appellant made the following submissions:

(i) CMO residue is obtained as remnant on distillation of crude oil. CMO Residue is nothing but the waste during distillation. The department has conducted chemical test of CMO and CMO Residue by National testing house, Kolkata, wherein it was reported that CMO Bituminous and CMO Residue (after distillation) are not the same. The report further stated that the product CMO residue not being Crude Mineral Oil, is not covered by the Tariff Heading 2709.00. The Adjudicating authority and Appellate authority have rejected their classification under the Chapter Heading 2709, on the basis of this test report. Their request for re-test from a reputed laboratory was not considered by the department. . No sample (sealed and signed) was ever made available to the Appellant so that they could get the same tested from a reputed and recognized laboratory. Since the Test was not conducted by following the procedure, the classification of the goods cannot be determined on the basis of the Test Report.

(ii) They filed monthly RT-12 /ER-1 Return disclosing all the facts which never disputed by the department and accepted the classification of CMO Residue as goods falling under sub-heading No. 27090000.

(iii) They cited the decision of the Tribunal in the case of BSM Petrochem Pvt. Ltd., reported in 2017(6) GSTL 480 (Tri.-All.) wherein it has held that the waste Crude Oil is classifiable under 27090000. The same vie has been taken by the Tribunal vide Final Order No.A/70552/2017-EX(DB) dated 05.06.2017, in the case of Bajrang Petrochemicals Pvt.Ltd.

5. The Ld. A.R stated that the Test Report clearly indicated that the CMO Residue is not classifiable under the Chapter heading 2709.00, accordingly, he prayed for upholding the impugned order.

6. Heard both sides and perused the appeal records.

7. We observe the issue involved in the present appeal is classification of the goods CMO Residue manufactured by the Appellant, whether it is appropriately classifiable under the Chapter Heading 27090000 as contended by the Appellant or under 27139000 as contended by the department. The impugned order has classified the goods under the sub heading 27139000on the basis of the Test conducted by national Testing Laboratory.

8. . Regarding the Test conducted by National Testing Laboratory, Kolkata, we observe that the Test was not conducted by following the procedure. No sample (sealed and signed) was ever made available to the Appellant so that they could get the same tested from a reputed and recognized laboratory. Their request for re-test from a reputed laboratory was not considered by the department. .  Since the Test was not conducted by following the procedure, we hold that the classification of the goods cannot be determined on the basis of the Test Report.

9. Classification of the goods is to be done based on the entries available in the Tariff Headings, Chapter Notes and the General rules of Interpretation of

the Tariff. Hence, it is required to analyze the descriptions available in the respective sub headings. For the sake of ready reference, the said chapter headings in the Tariff are reproduced below:

(i) Tariff sub heading 27090000 reads as under:

Petroleum oils and oils obtained from bituminous minerals, crude.

(ii) Tariff sub heading 27139000 reads as under;

Other residues of petroleum oils obtained from bituminous minerals.

10. We observe that Sub Heading 27139000 is a residual entry covering 'other residue of petroleum oils or oils obtained from bituminous minerals', Whereas 270900 is a specific entry which covers 'petroleum oils obtained from mineral oils' as well as from 'crude oil'. It is on record that CMO residue is obtained as remnant on distillation of crude oil, which is specifically mentioned in the subheading 270900 and not under 27139000. As per General Rules of Interpretation of the Tariff, a specific heading must be always preferred over a general heading while classifying the goods. Accordingly, we hold that CMO Residue is rightly classifiable under the subheading 270900 as claimed by the Appellant.

11.This view has been supported by the decision of the Tribunal vide Final Order No.A/70552/2017-EX(DB) dated 05.06.2017, in the case of Bajrang Petrochemicals Pvt. Ltd. The relevant portion of the order is reproduced below:

> "2. The brief facts of the case are that the appellants were engaged in the manufacture of petroleum products, namely 'Organic Composite Solvent' which are classifiable under Tariff Item No.3814.00.10 of schedule to Central Excise Tariff Act, 1985. The appellants were using Crude Petroleum Oil classifiable under Tariff Item Ni.2709.00.00 of the same schedule. During the process of manufacture of 'Organic Composite Solvent' the residue of crude petroleum oil leftover was called by the appellant as 'Residual Crude Petroleum Oil' or 'Reduced Crude Petroleum Oil' and classified the same under Tariff Item No. 2709.00.00. It appeared to revenue that leftover did not justify the definition of

crude petroleum oil and therefore the leftover should be classified under Tariff Item No. 27139000. Therefore, the appellants were issued with a Show Cause Notice dated 03.10.2007 demanding Central Excise duty of Rs.83,74,061/- under proviso to Sub-Section (1) of the Section 11A of Central Excise Act, 1944 for the period from April, 2006 to August, 2007. Further, there were proposals for penalty on the appellants. Further, Shri Mahesh Shukla, Authorized Signatory was also proposed with penalty under Rule 26 of Central Excise Rules, 2002. On contest the show Cause Notice was adjudicated through Order-in-Original dated 30.11.2009 wherein the original authority had decided classification of 'Residual Crude Petroleum Oil' also called as 'Reduced Crude Petroleum Oil' under Tariff Item No. 27139000 and confirmed the demand and imposed equal penalty on the appellant. Aggrieved by the said order, appellant preferred appeal before this Tribunal.

3. Learned Counsel for the appellant submitted that the very issue in respect of very manufacturer was decided by this Tribunal in Appeal No. E/1574/2010 EX(DB) through Final Order No. 70552/2017 dated 05.06.2017. He has contended that this Tribunal had held that the Residual Crude Oil is classifiable under Tariff Item No. 2709.00.00. He further contended that in view of such finding by this Tribunal, the present Show Cause Notice is not sustainable.

4. Heard the Learned A.R., who has agreed with the contention of the learned Counsel for appellant that the issue has been decided in Appeal No. E/1574/2010-EX(DB).

5. Having considered the submissions from both sides, we find that this Tribunal has decided this issue in Appeal No. E/1574/2010-EX(DB) through Final Order NO. 70552/2017 dated 05.06.2017 wherein this Tribunal has held that the Residual Crude Oil is classifiable under Tariff Item No. 2709.00.00 In view of such precedent decision of this Tribunal we hold that the show cause notice in the present appeal is not sustainable.

6. Therefore, we set aside the impugned Order-in-Original and allow the appeal. Appellant shall be entitled for consequential relief, as per law. "

12. Following the Tribunal decision cited above, we hold that the goods CMO Residue is rightly classifiable under the Chapter heading 270900 . Accordingly, the demand of duty in the impugned order is not sustainable. Since, the demand of duty is not sustainable the demand of interest and penalty is also not sustainable.

13. In view of the above discussion, we set aside the impugned order and allow the appeal filed by the Appellant.

(Dictated and pronounced in the open Court)

Sd/-
**(Ashok Jindal)**
**Member (Judicial)**

**Sd/-**
**(K. Anpazhakan)**
**Member (Technical)**

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