

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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 76124 of 2016

(Arising out of Order-in-Original No. 30/Commissioner/CE/Haldia/Adjn/2016 dated 29.03.2016 passed by the Commissioner of Central Excise & Service Tax, Haldia Commissionerate, 25, Princep Street, 3rd Floor, Kolkata – 700 072)

M/s. A.M. Engineering & Chemicals Company, : **Appellant**
S-5, Kharagpur Industrial Estate,
P.O.: Sadatpur, Rakha Jungle,
District: Medinipur (West), PIN – 721 301 (W.B.)

VERSUS

Commissioner of Central Excise : **Respondent**
Haldia Commissionerate,
25, Princep Street, 3rd Floor, Kolkata – 700 072
AND

Excise Appeal No. 76121 of 2016

(Arising out of Order-in-Original No. 30/Commissioner/CE/Haldia/Adjn/2016 dated 29.03.2016 passed by the Commissioner of Central Excise & Service Tax, Haldia Commissionerate, 25, Princep Street, 3rd Floor, Kolkata – 700 072)

Shri Apares Chandra Ghosh, Proprietor, : **Appellant**
M/s. A.M. Engineering & Chemicals Company,
S-5, Kharagpur Industrial Estate,
P.O.: Sadatpur, Rakha Jungle,
District: Medinipur (West), PIN – 721 301 (W.B.)

VERSUS

Commissioner of Central Excise : **Respondent**
Haldia Commissionerate,
25, Princep Street, 3rd Floor, Kolkata – 700 072

APPEARANCE:

Shri Satyaki Chaudhuri, Advocate,
Assisted by Smt. Pranjal Mathur, Advocate,
For the Appellant(s)

Shri S.K. Dikshit, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 76265-76266 / 2025

DATE OF HEARING: 30.04.2025

DATE OF DECISION: 08.05.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

M/s. A.M. Engineering & Chemicals Company, S-5, Kharagpur Industrial Estate, P.O.: Sadatpur, Rakha Jungle, District: Medinipur (West), PIN – 721 301 (W.B.)(hereinafter referred to as the “appellant no. 1” / “appellant-company”) has preferred an appeal challenging the Order-in-Original No. 30/Commissioner/CE/Haldia/Adjn/2016 dated 29.03.2016 passed by the Commissioner of Central Excise & Service Tax, Haldia Commissionerate, 25, Princep Street, 3rd Floor, Kolkata – 700 072 wherein the demand of central excise duty amounting to Rs.1,29,37,313/- has been confirmed against the appellant no. 1. In the said order, the Id. adjudicating authority has also demanded interest and imposed a penalty equivalent to the amount of central excise duty confirmed, under Section 11AC of the Central Excise Act, 1944. The amounts of Rs.36,58,248/- and Rs.7,201/- paid by the appellants against the central excise duty demanded and interest respectively have also been appropriated vide the said order.

1.1. A personal penalty equivalent to the amount of central excise duty has also been imposed on Shri Aparesh Chandra Ghosh (hereinafter referred to as the “appellant no. 2”), Proprietor of the appellant no. 1, under Rule 26 of the Central Excise Rules, 2002.

2. Aggrieved against the impugned order, the appellant-company and its Proprietor, Shri Apares Chandra Ghosh, have filed the present appeals.

2.1. Both the appeals emanate from the same Order-in-Original and therefore, both are taken up for decision by a common order.

3. The facts of the case are that the appellant no. 1 is a proprietorship concern which is engaged in the business of manufacturing of soap solution for lubrication of chain conveyors in LPG bottling plants, potassium base brown soap, anti-adhesive for batch off, konkote equivalent, konkote brown soap, sodium hypochlorite and detergent powder.

3.1. Four Show Cause Notices were issued in this case, out of which two were served on M/s. A.M. Engineering & Chemical Co. (appellant no. 1 herein) and the other two were served on Shri Apares Chandra Ghosh (appellant no. 2 herein). All the Show Cause Notices have collectively demanded Rs.1,29,37,313/- as unpaid central excise duty covering the period from 2009-10 to 2013-14.

3.2. During adjudication of the above Notices, only one Order-in-Original viz. Order-in-Original No. 30/Commissioner/CE/Haldia/Adjn/2016 dated 29.03.2016 was passed, which has been challenged by way of the present appeals.

4. It is the contention of the Ld. Counsel for the appellants that it is a well settled law that that identity of a proprietor and its proprietorship concern are one and the same and hence, separate demands cannot be raised against both the proprietor and the proprietorship concern. In support of this contention, reliance is placed on the following decisions: -

- i. *Ashok Transport Agency vs. Awadhesh Kumar &Anr.* [(1998) 5 SCC 567]
- ii. *Raghu Lakshminarayanan vs. Fine Tubes* [(2007) 5 SCC 103]
- iii. *M.M Lal vs. State NCT of Delhi &Anr.* [(2013) 196 DLT 453]
- iv. *MPP Technologies vs. Rupa Banerji* [(2023) 4 KantLJ 161]

4.1. It is further submitted by the appellants that in the impugned order, it is alleged that the appellants had misled the Department by classifying its goods under Chapter 15 of the Central Excise Tariff Act, 1985. It is their submission in this regard that apart from a few finished products like sodium hypochlorite and detergent powder that attract central excise duty, the remaining products, such as brown soap, anti-tack agent, lubrication for chain conveyors, teepol, anti-adhesive for batch off, and conkote brown soap, are derived from vegetable oil extracts, and as such ought to be classified under Chapter 15 of the Central Excise Tariff Act, 1985. It is stated that although the aforesaid finished products like sodium hypochlorite and detergent powder are liable to attract central excise duty, the appellant no. 1 is not obligated to pay such tax in view of the fact that the annual turnover specifically against the sale of these items does not exceed Rupees 1.5 Crores, by virtue of Notification No. 8/2003-Central Excise dated 01.03.2003 as amended by another notification, being no. 8/2007-Central Excise dated 01.03.2007.

4.2. The appellants submit that to manufacture all other goods, non-edible acid oil and sulfuric acid are combined to produce sulphonated vegetable oil; this is then mixed with caustic soda, caustic potash, and D.M. water for chemical modification; the mixture is further treated with additives and deforming agents, allowed to settle, and the finished goods are decanted and filled into drums, with the top portion transferred as a by-product. It is the appellant's contention that based on the commercial understanding and the manner in which such goods are traded in the market, all such goods are classifiable under the Chapter 15 as these goods are ultimately derivatives of vegetable

oils. In fact, it is their submission that the HSN code allotted to the appellant for the above mentioned products is 15180040 and such factor ought to have had a persuasive value while determining the classification of the goods by the Department. The Ld. Counsel for the appellants therefore contends that the final product derived from the aforementioned process satisfies the description of goods falling under Chapter 15 of the Central Excise Tariff Act, 1985, and hence classified it under Chapter 15 (Item No. 15180040) instead of Chapter 34, (Item No. 34039900). In this regard, it is argued by the appellants that the respondent's contention that the said goods are classified under Chapter 34 under such heading is without any proper justification as the Department has never disclosed sufficient materials to arrive at such conclusion. In support of this contention, the appellants have cited the decision of the Tribunal at Bangalore in the case of *Highland Produce Go. Ltd. vs. Commissioner of Central Excise, Cochin [2002 (145) ELT 593]*

4.3. The Ld. Counsel for the appellants submits that they have rightly classified the goods under Chapter 15 of the Central Excise Tariff Act, specifically under Tariff Item 15180040, and paid appropriate central excise duty thereon and that the impugned order, confirming the demands against them by re-classifying the product under Tariff Item 34039900, is not sustainable. Accordingly, the Ld. Counsel for the appellants prayed for setting aside the demands confirmed against the appellant-company in the impugned order.

4.4. On behalf of the Proprietor of the company, it is their plea that the proprietorship concern and its proprietor cannot be penalized separately; as separate penalty has been imposed on the proprietorship concern, imposition of penalty on Shri Apares Chandra Ghosh is unwarranted. Therefore, it is prayed that the penalty imposed on the appellant no. 2 herein be set aside.

5. On the other hand, the Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order.

6. Heard both sides and perused the appeal records.

7. We find that the dispute in this case pertains to the classification of the impugned goods. The appellants have contended that the said goods manufactured by them are appropriately classifiable under Chapter 15 of the Central Excise Tariff Act, 1985 whereas the Department proposes to re-classify the same under Chapter 34. For the sake of ready reference, the relevant entries under the said Chapters are reproduced below:–

Tariff Item	Description of goods	Units	Rate of duty
(1)	(2)	(3)	(4)
1518	ANIMAL OR VEGETABLE FATS AND OILS AND THEIR FRACTIONS, BOILED, OXIDISED, DEHYDRATED, SULPHURISED, BLOWN, POLYMERISED BY HEAT IN VACUUM OR IN INERT GAS OR OTHERWISE CHEMICALLY MODIFIED EXCLUDING THOSE OF HEADING 1516; INEDIBLE MIXTURES OR PREPARATIONS OF ANIMAL OR VEGETABLE FATS OR OILS OR OF FRACTIONS OF DIFFERENT FATS OR OILS OF THIS		

		CHAPTER, NOT ELSEWHERE SPECIFIED OR INCLUDED		
1518 00	-	<i>Animal or vegetable fats and oils and their fractions, boiled, oxidized, dehydrated, sulphurised, blown, polymerized by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516; inedible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this Chapter, not elsewhere specified or included:</i>		
	---	<i>Linseed oil</i>		
1518 00 11	----	Edible grade	kg.	6%
1518 00 19	----	Other	kg.	6%
	---	<i>Castor oil, dehydrated:</i>		
1518 00 21	----	Edible grade	kg.	6%
1518 00 29	----	Other	kg.	6%
	---	<i>Other vegetable oil and its fats:</i>		
1518 00 31	----	Edible grade	kg.	6%
1518 00 39	----	Other	kg.	6%
1518 00 40	---	Other	kg.	6%

Tariff Item (1)	Description of goods (2)	Units (3)	Rate of duty (4)
3403	LUBRICATING PREPARATIONS (INCLUDING CUTTING OIL PREPARATIONS, BOLT OR NUT RELEASE PREPARATIONS, ANTI-RUST OR ANTI-CORROSION PREPARATIONS AND MOULD RELEASE PREPARATIONS, BASED ON LUBRICANTS) AND PREPARATIONS OF A KIND USED FOR THE OIL OR GREASE TREATMENT OF TEXTILE MATERIALS, LEATHER, FURSKINS OR OTHER MATERIALS, BUT EXCLUDING PREPARATIONS CONTAINING, AS BASIC CONSTITUENTS, 70 % OR MORE BY WEIGHT OF PETROLEUM OILS OR OF OILS OBTAINED FROM BITUMINOUS MINERALS		
	- <i>Containing petroleum oils or oils obtained from bituminous minerals:</i>		

3403 11 00	--	Preparations for the treatment of textile materials, leather, furskins or other materials	kg.	12.5%
3403 19 00	--	Other	kg.	12.5%
	-	Other:		
3403 91 00	--	Preparations for the treatment of textile materials, leather, furskins or other materials	kg.	12.5%
3403 99 00	--	Other	kg.	12.5%

8. We observe that the appellants have classified the said goods under Tariff Item number 1518 00 40 of the CETA,1985. This Tariff heading mainly covers 'vegetable Oil and its fats of edible grade. From the process of manufacture submitted by the appellant, we find that in the first stage of manufacturing Sulfonated Fatty Acid emerges. At the second stage, the Sulfonated Fatty Acid is transferred to another tank and Caustic Soda and Caustic Potash solution is added with DM water (all chemically required quantity) and mixed properly for another two and half hours for chemical modification. As a third stage, the mixture is transferred to third tank wherein required quantity of additives chemical along with Defoaming Agent is added for further chemical modification. After settling for eight to ten hours, the finished goods (lower portion of the mixture) are decanted and filled in drums and the top portion of the mixture is transferred to another tank as Bye Product. Thus, we observe that the finished products emerge during the course of manufacture cannot be considered as 'vegetable Oil and its fats of edible grade. Thus, we hold that the goods manufactured by the appellant cannot be classified under the Central Excise tariff Entry 15180040.

8.1. From a perusal of the said Tariff Headings under 3403, we find that Chapter Heading 3403 deals with 'Lubricating Preparations'. It is on record that the goods manufactured by the appellant-company are used as 'solutions for lubrication of chain conveyors in LPG bottling plants, potassium base brown soap, anti-adhesive for batch off. conkote equivalent, conkote brown soap, sodium hypochlorite and detergent powder'.

8.2. In their statement recorded from Shri Apares Chandra Ghosh (appellant no. 2), in response to Q. No. 32, he has stated that the impugned product is *"commonly said as a Lubricating Soap Solution, but technically, it facilitates the movement of LPG cylinders from one place to the other. So technically, it may or may not be called as Lubricating Soap Solution."* Thus, it is evident that the product manufactured by the appellant is in the nature of a lubricating solution which is used for movement of LPG Cylinders from one place to another.

8.3. Chapter Heading 3403 specifically covers lubricating preparations. As per the interpretative rules for classification of goods, when a product is classifiable under more than one Chapter Heading, the Chapter Heading which is more specific is to be preferred over the general heading. In the present case, the goods manufactured by the appellant viz. lubricating preparations, are specifically mentioned under Chapter Heading 3403 and accordingly we are of the view that appropriate classification of the impugned goods is under the Chapter Heading 3403 only.

8.4. In view of the above findings, we hold that the goods manufactured by the appellant-company are appropriately classifiable under Chapter Heading 3403 of the Central Excise Tariff Act.

9. The appellants contended that they were of the bona fide belief that the said goods would be classifiable under Tariff Item No.1518 0040 of the CETA which was exempted under Notification No. 3/2006-C.E., dated 1-3-2006, as under: -

11.	1517 90 or 1518	All goods (other than margarine and similar edible preparations).	Nil	—
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The goods were also exempted under Notification No. 12/2012-C.E. dated 01.03.2012. However, we observe that the goods are not classifiable under the Tariff Heading 15180040 and hence we hold that the appellant is not eligible for the benefit of the said exemptions.

10. Regarding invocation of extended period to demand central excise duty under the classification 3403, we observe the appellants have not suppressed any information from the Department and the Department had approved their classification. Thus, we observe that the Department was aware that the appellant had been classifying the said goods under Chapter Heading 1518 and availing the benefit of Notification No. 3/2005-C.E. dated 24.02.2005, as amended by Notification Nos. 10/2006-C.E. dated 01.03.2006 and 12/2012-C.E. dated 17.03.2012. Thus, we agree with the submission made by the appellants that the Department was well aware of the classification adopted by the appellant and the benefit of the said Notification availed by them and hence, the

allegation of suppression of facts is not established in this case. Under these circumstances, we hold that the demands confirmed in the impugned order by invoking the extended period of limitation is not sustainable. Accordingly, the demand confirmed is restricted to the normal period of limitation.

10.1. Since there is no suppression of facts with intention to evade the duty established in this case, we hold that no penalty imposable on the appellant-company. Accordingly, the penalty imposed on the appellant-company is set aside.

11. Regarding the separate penalty imposed on the proprietor (appellant no. 2), we observe that it is a settled law that that identity of a proprietor and its proprietorship concern are one and the same and hence, separate demands cannot be raised against both the proprietor and the proprietorship concern. In support of this view, reliance is placed on the following decisions: -

- i. *Ashok Transport Agency vs. Awadhesh Kumar &Anr.* [(1998) 5 SCC 567]
- ii. *Raghu Lakshminarayanan vs. Fine Tubes* [(2007) 5 SCC 103]
- iii. *M.M Lal vs. State NCT of Delhi &Anr.* [(2013) 196 DLT 453]
- iv. *MPP Technologies vs. Rupa Banerji* [(2023) 4 KantLJ 161]

11.1. Thus, by relying on the decisions cited above, we hold that a separate demand cannot be raised against the proprietor. As the demand against the proprietor is not sustained, no penalty is imposable on the proprietor / appellant no. 2.

12. In view of the above, we pass the following order: -

- (a) We hold that the impugned goods are rightly classifiable under Tariff Item No. 3403 99 00 of the Central Excise Tariff Act, 1985. Accordingly, the benefit provided under Notification No. 3/2005-C.E. dated 24.02.2005, as amended, is not available to the appellants.
- (b) However, we hold that the demand confirmed in the impugned order by invoking the extended period of limitation is not sustainable. The demand is restricted to the normal period of limitation, which is payable, along with interest thereon.
- (c) The penalties imposed on the appellants herein are set aside.

13. The appeals filed by the appellants are disposed of on the above terms.

(Order pronounced in the open court on **08.05.2025**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd