

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA
REGIONAL BENCH – COURT NO. 2**

Excise Appeal No. 76456 of 2024

(Arising out of Order-in-Appeal No. 256/CX-KOL/CX/Kol-S/2024-25 dated 29.07.2024 passed by the Commissioner of C.G.S.T. and C.X., Kolkata Appeals-I Commissionerate, G.S.T. Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

M/s. Balmer Lawrie and Company Limited : **Appellant**
P-43, Hide Road Extension,
Kolkata – 700 088

VERSUS

Commissioner of C.G.S.T. and Central Excise : **Respondent**
Kolkata South Commissionerate,
G.S.T. Bhawan, 180, Rajdanga Main Road, Shantipally,
Kolkata – 700 107

WITH

Excise Appeal No. 716 of 2011

(Arising out of Order-in-Original No. 13/CE/Commr./Kol-VI/2011 dated 31.03.2011 passed by the Commissioner of Central Excise, Kolkata-VI Commissionerate, Bamboo Villa, 6th Floor, 169, A.J.C. Bose Road, Kolkata – 700 014)

M/s. Balmer Lawrie and Company Limited : **Appellant**
P-43, Hide Road Extension,
Kolkata – 700 088

VERSUS

Commissioner of Central Excise : **Respondent**
Kolkata-VI Commissionerate,
Bamboo Villa, 6th Floor, 169, A.J.C. Bose Road,
Kolkata – 700 014

APPEARANCE:

Shri J.P. Khaitan, Senior Advocate,
Assisted by Smt. Sanjukta Gupta, Advocate,
For the Appellant

Shri B.K. Singh, Authorized Representative,
For the Respondent

CORAM:

HON’BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON’BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 77644-77645 / 2025

DATE OF HEARING: 03.11.2025

DATE OF DECISION: 06.11.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

Excise Appeal No. 76456 of 2024 has been filed by M/s. Balmer Lawrie and Company Limited, P-43, Hide Road Extension, Kolkata – 700 088(hereinafter referred to as the “appellant”) against the Order-in-Appeal No. 256/CX-KOL/CX/Kol-S/2024-25 dated 29.07.2024 passed by the Commissioner of C.G.S.T. and C.X., Kolkata Appeals-I Commissionerate, G.S.T. Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107. The dispute involved in this appeal is as to whether the lubricating oils and greases manufactured by the appellant falling under sub-heading 3403.00 are eligible for exemption under Notification bearing No. 120/84-CE dated May 11, 1984 ("the said Notification") as claimed in the classification list dated June 11, 1990.

1.1. The consequential demand for duty of Rs.2,62,29,188 for the period up to February 28, 1994 and equal penalty under rule 173Q(1) of the Central Excise Rules, 1944 is the subject matter of Excise Appeal No. 716 of 2011.

1.2. As both the appeals are dealing with the same issue, they are taken up together for decision by a common order.

2. In so far as the claim for exemption under Notification bearing No. 120/84-CE dated May 11, 1984 is concerned, this is the third round of proceedings. The decision of the Tribunal in the first round is of great significance. The material facts relating to the earlier rounds are briefly stated hereinafter.

2.1. The Assistant Collector of Central Excise by an order dated March 3, 1993 held that exemption under the said Notification was not admissible in respect of lubricating oils and greases falling under sub-heading 3403.00. The said order was upheld on first appeal by an order dated December 14, 1993. The said appellate order was made subject matter of Appeal No. E-36/94 which was decided by this Tribunal by an order dated September 2, 2004. In the order, the Tribunal held that: -

- (i) exemption was not dependent on the classification of the goods;
- (ii) the said Notification incorporated its own definition in respect of the goods eligible for the exemption;
- (iii) exemption was to be allowed if the goods satisfied the definition contained in the Notification and were ordinarily used as lubricants.

2.2. The matter was thus remanded to the adjudicating authority with the direction to arrive at a finding on the issue after considering the evidence placed by both the sides.

3. In the remand proceedings, the appellant submitted various documents under cover of its letter dated January 22, 2011 including Chartered Engineer's certificate to show that the goods satisfied the definition contained in the said Notification and certificates of buyers like Research Designs and Standards Organisation, Ministry of Railway, Bharat Petroleum Corporation Ltd. and Oil & Natural Gas Corporation Ltd.; registration certificate granted by the Directorate General of Supplies and Disposals, Department of Commerce, Ministry of Commerce

&Industry, list of lubricants recommended by Research Designs & Standards Organisation, Ministry of Railway, orders of customers like Oil & Natural Gas Corporation Ltd. and Indian Railways; tender notice of Oil India Ltd., Indian Standard Specification for locomotive greases and appellant's invoices to show that the goods in question were ordinarily known and used as lubricants.

3.1. The Deputy Commissioner by an order dated March 11, 2011 held that:-

(a) exemption under the said Notification was not admissible in respect of lubricating oils and greases falling under sub-heading 3403.00 and only those covered under Chapter 27 were eligible for the exemption; the Deputy Commissioner sought to rely upon an opinion of the Department's Chief Chemist regarding interpretation of the said Notification;

(b) the appellant had not produced any evidence to show that the goods were obtained by blending or compounding of mineral oils with other ingredients;

3.2. At this stage, an order dated March 31, 2011 was passed by the Commissioner on a Show Cause Notice dated December 31, 1997 for recovery of consequential demand for duty of Rs.2,62,29,188 for the period up to February 28, 1994 and equal penalty under rule 173Q(1) of the Central Excise Rules, 1944.

3.3. On appeal against the Deputy Commissioner's order dated March 11, 2011, the Commissioner (Appeals), by an order dated February 27, 2017, observed that the said notification did not specify any particular class of goods with respect to their central

excise tariff nomenclature or by their chemical/physical properties save that the goods under exemption should have mineral oil as one of the components. The Commissioner (Appeals) observed that the order dated September 2, 2004 passed by this Tribunal, in terms of which evidence placed by both the sides was required to be examined, had not been carried out. The matter was thus remitted back to the adjudicating authority to reconsider the issues afresh.

4. The revenue preferred Appeal No. E/75909/2017 in respect of the said appellate order dated February 27, 2017 on the ground that the Commissioner (Appeals) had no power to remand. The said appeal relating to exemption claim affecting rate of duty was required to be decided by the Division Bench of the Tribunal. However, the matter was listed before the Single Member Bench. Although the appellant had prayed for an adjournment, the revenue pressed its appeal and the Tribunal by order dated August 3, 2017 accepted the revenue's contention that the Commissioner (Appeals) did not have the power to remand. The Tribunal remanded the matter to the adjudicating authority, who was to take a decision independently without being influenced by any observation of the Commissioner (Appeals).

4.1. The appellant filed a miscellaneous application for recalling the said order dated August 3, 2017 since the matter was required to be decided by the Division Bench. The revenue also filed miscellaneous application pointing out that the matter should have been remanded to the Commissioner (Appeals). By an order dated February 21, 2018, the Tribunal rectified its order dated August 3, 2017 so that the matter stood remanded to the Commissioner (Appeals) and

dismissed the appellant's miscellaneous application as infructuous.

4.2. The impugned order dated July 29, 2024 was thereafter passed by the Commissioner (Appeals) upholding the order dated March 11, 2011 of the Deputy Commissioner. The Commissioner (Appeals) held that only goods falling under central excise sub-headings 2710.60 and 2710.80 fully satisfied the conditions of the said Notification and that the provisions of the said Notification did not apply to lubricating preparations falling under heading 34.03.

4.3. Excise Appeal No. 76564 of 2024 has therefore been filed by the appellant against the impugned Order-in-Appeal dated 29.07.2024, wherein the Ld. Commissioner (Appeals) has denied the benefit of exemption as provided under Notification bearing No. 120/84-CE dated May 11, 1984, to the goods, namely, lubricating oils and greases manufactured by the appellant. Against the consequential demand for duty of Rs.2,62,29,188 for the period up to February 28, 1994 and equal penalty under rule 173Q(1) of the Central Excise Rules, 1944 as confirmed vide the Order-in-Original dated 31.03.2011, Excise Appeal No. 716 of 2011 has been filed by the present appellant.

5. The Ld. Senior Advocate appearing on behalf of the appellant submits that the impugned order dated July 29, 2024 passed by the Commissioner (Appeals) is completely contrary to the order dated September 2, 2004 passed by the Tribunal; that it is evident from the said order dated September 2, 2004 that the Tribunal has decided the matter going by the plain terms of the exemption notification. In this connection, paragraph 7 of the said order dated

September 2, 2004 is set out hereinbelow for ready reference.

"It is clear that the Notification has incorporated its own definition of blended or compounded lubricating oils and greases by describing them as that is to say lubricating oils and greases obtained by straight blending of mineral oils or by blending or compounding of mineral oils with any other ingredients. The question of eligibility of the goods for the exemption under Notification 120/84 could be resolved by reaching a findings as to whether they satisfy the definition contained in the notification and whether the goods are ordinarily used as lubricants. This can only be decided after adducing evidences from both the sides. Therefore, we set aside the impugned order and remand the matter to the adjudicating authority with a direction that the finding of this issue is to be reached after considering the evidences placed by both the sides."

(emphasis added)

5.1. He submits that the principle of interpretation followed by the Tribunal is completely in accord with the Constitution Bench judgment of the Hon'ble Supreme Court in *Commissioner of Central Excise v Hari Chand Shri Gopal* [2010 (260) ELT 3 (SC)] cited by the Commissioner (Appeals). It is submitted that the Commissioner (Appeals) set out paragraphs 22 and 23 from the said Constitution Bench decision; the material portion of paragraph 22 of the said decision is set out hereinbelow:-

*".....A Constitution Bench of this Court in *Hansraj Gordhandas v. H. H. Dave*(1996) 2 SCR 253, held that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption."*

(emphasis added)

5.2. The Ld. Senior Advocate for the appellant points out that the Tribunal applied the above principle in deciding the matter by its order dated September 2, 2004; the Tribunal did not accept the view of the authorities below that only goods falling under sub-headings 2710.60 and 2710.80 were eligible because the said Notification did not mention any particular tariff heading/sub-heading. He submitted that the exercise which was directed to be carried out by the Tribunal was plainly what had to be ascertained for determining eligibility to the exemption granted by the said Notification. It is his case that, having regard to the findings of the Tribunal, it was not open to the Commissioner (Appeals) to again hold, upon his own interpretation of the said Notification, that only goods of sub-headings 2710.60 and 2710.80 were eligible for the exemption.

5.3. Without prejudice to the above, the Ld. Senior Advocate appearing on behalf of the appellant have made various submissions which can be summarized as under: -

- (a) A perusal of headings 27.10 and 34.03 would show that both headings cover preparations containing as basic constituents petroleum oils or oils obtained from bituminous minerals. To fall under heading 27.10, such preparations must contain by weight 70% or more of such oils. Those with less will fall under heading 34.03. Lubricating oils and greases are also preparations of petroleum oils or oils obtained from bituminous minerals and whether they will fall under heading 27.10 or heading 34.03 will depend upon the weight of the constituent

petroleum oils or oils obtained from bituminous minerals.

- (b) The said Notification does not mention any heading or sub-heading and does not stipulate that the goods in respect of which exemption is granted should contain any particular quantity by weight of petroleum oils or oils obtained from bituminous minerals. Exemption is granted in respect of "lubricating oils and greases obtained by straight blending of mineral oils or by blending or compounding of mineral oils with any other ingredients". If it was intended that only goods falling under heading 27.10 were to be granted exemption, the said Notification would have so indicated either by mentioning heading 27.10 or the composition in terms of percentage by weight of constituent oils as 70% or more. However, the said Notification contains no such stipulation. The definition in the said Notification of the goods in respect of which exemption is granted being such, the Tribunal was pleased to hold that eligibility for the exemption was to be resolved by reaching a finding as to whether the appellant's goods satisfied the definition contained in the said Notification and whether the goods were ordinarily used as lubricants. The appellant submits that the percentage by weight of mineral oil and other raw materials contained in the lubricating oils and greases manufactured by the appellant were also duly mentioned in the said certificate. The other ingredient in several items was bitumen, which itself contained mineral oil. It was evident from the said certificate that the appellant's goods classified

by it under heading 34.03 satisfied the definition contained in the said Notification. In addition to the said certificate, the appellant furnished before the authorities below the following documents to show that the lubricating oils and greases classified by it under heading 34.03 were ordinarily known as lubricants:-

- (i) Certificate of Research Designs and Standards Organisation, Ministry of Railways, Government of India;
- (ii) Certificate of Oil and Natural Gas Corporation Ltd.;
- (iii) Another certificate of Research Designs & Standards Organisation, Ministry of Railways, Government of India;
- (iv) A third certificate of Research Designs & Standards Organisation, Ministry of Railways, Government of India;
- (v) Registration certificate granted by Directorate General of Supplies & Disposals, Department of Commerce, Ministry of Commerce & Industry, Government of India;
- (vi) List of lubricants recommended by Research Designs & Standards Organisation, Ministry of Railways, Government of India;
- (vii) Order of Oil & Natural Gas Corporation Ltd.;
- (viii) Orders of Indian Railways;
- (ix) Tender notice of Oil India Ltd.;

- (x) Indian Standard Specification for Locomotive Greases-IS: 720-1974;
 - (xi) Assessee's invoice;
 - (xii) Rationalised list of lubricants for machinery and plants issued by Research Designs & Standards Organisation, Ministry of Railways, Government of India.
- (c) The evidence adduced by the appellant to show that the goods in question are lubricating oils and greases as defined in the said Notification ordinarily used as lubricants has not been disputed by the Revenue. The only material adverted to by the Revenue is an opinion of the Department's Chief Chemist regarding interpretation of the said Notification. It was beyond the Chief Chemist's jurisdiction to interpret the said Notification or to determine the scope of the exemption granted, as held by the Tribunal in the case of *Magic Fasteners Pvt. Ltd. v. Commissioner* [2014 (302) ELT 470 (Tri. Del.)]. Even otherwise, the opinion of the Chief Chemist is contrary to the decision dated September 2, 2004 of the Tribunal.
- (d) Reliance has also been placed on the decision rendered in the case of *Bharat Petroleum Corporation Ltd. v. Commissioner of C.Ex., Kolkata-I* [2003 (154) E.L.T. 698 (Tri. – Kol.)]
- (e) It is further submitted that identical materials manufactured by other manufacturers and supplied to Indian Railways have been allowed the exemption under the said Notification and no different view ought to have been taken in the appellant's case.

5.4. In view of the above submissions, the appellant have contended that in the facts and circumstances of the instant case, they have established that the subject goods falling under sub-heading 3403.00 satisfy the definition contained in the said Notification and are ordinarily used as lubricants and thus eligible for the exemption.

6. The Ld. Authorized Representative representing the Revenue has reiterated the findings in the impugned order.

7. Heard both sides and perused the records of the case.

8. We observe that the issue involved in the present appeals is availability of the benefit of exemption as provided under the under Notification bearing No. 120/84-CE dated May 11, 1984 to the goods, namely, lubricating oils and greases manufactured by the appellant. From the facts on record, we find that the appellant classified the said goods under the CETH 3403.00. The Assistant Collector of Central Excise by an order dated March 3, 1993 held that exemption under the said Notification was not admissible in respect of lubricating oils and greases falling under sub-heading 3403.00. The said order was upheld on first appeal by an order dated December 14, 1993. The said appellate order was made subject matter of Appeal No. E-36/94 which was decided by this Tribunal by an order dated September 2, 2004. In the order, the Tribunal held that: -

- (i) exemption was not dependent on the classification of the goods;
- (ii) the said Notification incorporated its own definition in respect of the goods eligible for the exemption;

(iii) exemption was to be allowed if the goods satisfied the definition contained in the Notification and were ordinarily used as lubricants.

8.1. The matter was thus remanded to the adjudicating authority with the direction to arrive at a finding on the issue after considering the evidence placed by both the sides.

8.2. On remand proceedings, the Deputy Commissioner has decided the issue by an order dated March 11, 2011. wherein he has held that the said exemption provided under the Notification No. 120/84-CE dated May 11, 1984 was not admissible in respect of lubricating oils and greases falling under sub-heading 3403.00 and only those covered under Chapter 27 were eligible for the exemption. Thus, we observe that the Ld. adjudicating authority has again decided the eligibility of the benefit of the notification on the basis of classification of the impugned goods, even though the Tribunal order dated September 2, 2004 categorically stated that the benefit of exemption would not be dependent on the classification of the goods.

8.3. For ready reference the exemption provided under the Notification No. 120/84-CE dated May 11, 1984, is reproduced below:

Exemption to blended lubricating oils and greases. In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts blended or compounded lubricating oils and greases, that is to say, lubricating oils and greases obtained by straight blending of mineral oils or by blending or compounding of mineral oils with any other ingredients, from the whole of the duty of excise leviable thereon under section 3 of the Central Excises and Salt Act, 1944 (1 of 1944):

Provided that such blended or compounded lubricating oils and greases are produced out of such mineral oils on which appropriate duty of excise leviable under section 3 of the Central Excises and Salt Act, 1944 (1 of 1944) or the additional duty of Customs leviable under section 3 of the Customs Tariff Act, 1975 (51 of 1975), has been paid.

Explanation. For the purposes of this notification, all stocks of mineral oils obtained by a manufacturer for producing lubricating oil and greases, except such stocks as are clearly recognisable as being non-duty paid, shall be deemed to have discharged appropriate duty of excise leviable under section 3 of the Central Excises and Salt Act, 1944 (1 of 1944) or the additional duty of customs leviable under section 3 of the Customs Tariff Act, 1975 (51 of 1975).

[Notification No. 120/84-C.E., dated 11.5.1984 as amended by Notifications No. 78/86-C.E., dated 10.2.1986; No. 256/88-C.E., dated 30.9.1988 and No. 94/89-C.E., dated 1.3.1989.]

8.4. From the Notification No. 120/84-C.E. dated 11.05.1984 reproduced above, we find that the said Notification does not mention any heading or sub-heading and does not stipulate that the goods in respect of which exemption is granted should contain any particular quantity by weight of petroleum oils or oils obtained from bituminous minerals. Exemption is granted in respect of "lubricating oils and greases obtained by straight blending of mineral oils or by blending or compounding of mineral oils with any other ingredients". We observe that the Tribunal order dated September 2, 2004 also categorically stated that the benefit of exemption would not dependent on the classification of the goods and the eligibility for the exemption was to be resolved by reaching a finding as to whether the appellant's goods satisfied the definition contained in the said Notification and whether the goods were ordinarily used as lubricants.

9. In this regard, we take note of the fact that the appellant submitted various certificates, as listed under paragraph 5.3 (b) of this Order, to establish that the lubricating oils and greases manufactured by them satisfy the definition as required under the Notification No. 120/84 dated 11.05.1984. Thus, we do not agree with the finding of the lower authorities that the appellant had not produced any evidence to show that the goods were obtained by blending or compounding of mineral oils with other ingredients. We find that the lower authorities have completely overlooked the Chartered Engineer's certificate. It is also observed that the lower authorities did not dispute the evidence adduced by the appellant to show that the goods in question were lubricating oils and greases ordinarily known and used as lubricants and no evidence has been brought on record by the Revenue to counter the said certificates/evidence produced by the appellant. Consequently, we hold that the appellant is eligible for the benefit of the Notification No. 120/84-C.E. dated 11.05.1984.

9.1. We find that a similar view has been expressed in the case of *Bharat Petroleum Corporation Ltd. v. Commissioner of C.Ex., Kolkata-I [2003 (154) E.L.T. 698 (Tri. – Kolkata)]*, wherein this Tribunal allowed the benefit of Notification No. 120/84-C.E. to the assessee. For ease of reference, the relevant paragraph of the said order is reproduced below: -

"5. It is apparent from the wordings of the Notification that it exempts blended or compounded lubricating oils obtained by straight blending of duty paid mineral oils or by blending or compounding of mineral oils with any other ingredients. The Appellants have claimed that the impugned products are blended and compounded lubricating oils and as such are exempted from payment of duty in terms of the Notification. It has been mentioned by them that

all the products are manufactured by them by blending duty paid base mineral oils. The Revenue has not rebutted the process of blending of base mineral oils for getting the impugned products. The Revenue's only contention is that as per sub-heading 2710.60 Lubricating oil is that oil which is ordinarily used for lubrication, excluding any hydrocarbon oil which has its flash point below 94°C and since the impugned products were sold to manufacturers at a concessional rate of Sales Tax @ 2% as against 11% charged to dealers/users of the products. It is also the contention of the Revenue that the impugned goods have not been classified under sub-heading 2710.60, these are not lubricating oils to which exemption has been granted under Notification No. 120/84-C.E We find force in the submissions of the Appellants that as these products are blended or compounded lubricants, the specifications mentioned in the Notification are satisfied. sub-heading 2710.60 covers only those lubricating oils which are having flash point 94°C or above. The other lubricating oils would be classifiable under sub-heading 2710.99 as "Others". The phrase "that is to say" used in sub-heading 2710.60 has been interpreted to be the words of limitation by the Supreme Court in the case of Royal Hatcheries Pvt. Ltd. v. State of A.P., 1994 (53) ECR 200 (S.C.). The fact that sub-heading 2710.60 covers an exclusion clause goes to support the case of the Appellants that there may be other Lubricating oils which may fall in the residuary Heading "Others". It is also significant to note that Notification No. 120/84-C.E. exempts lubricating oil without mentioning any Tariff Heading/sub-heading. It means that all lubricating oils, which satisfy the conditions specified in the Notification, would be eligible for the exemption provided therein. As the Appellants have complied with the wordings of the Notification and it is also not the case of the Department that mineral oils used for blending or compounding lubricating oil were not duty paid, the benefit of Notification will be available to the Appellants. The question of examining the aspect of "Ordinarily used" does not arise as the impugned products were classified under sub-heading 2710.99 where no such words have been used. Thus the benefit of Notification No. 120/84-C.E. is available to the impugned products. The Appeal is thus allowed."

9.2. We observe that the ratio of the above decision is squarely applicable to the facts and circumstances of the present appeals. Thus, we find that the benefit of the Notification No. 120/84-C.E. has been allowed in respect of the impugned product viz. lubricating oils and greases, manufactured by other manufacturers. Hence, we do not see any reason to deny the benefit of the said Notification to the case of the appellant, as the products manufactured are the same.

10. In view of the above discussion, we find that the appellant is entitled to the benefit of Notification No. 120/84-C.E. dated 11.05.1984, as claimed. Accordingly, we do not find any merit in the impugned Order-in-Appeal dated 29.07.2024 denying the benefit of Notification No. 120/84-C.E. to the appellant. Excise Appeal No. 76564 of 2024 stands allowed thus.

11. We note that Excise Appeal No. 716 of 2011 has been filed by the appellant against the consequential confirmation of duty of Rs.2,62,29,188/- and equal penalty under rule 173Q(1) of the Central Excise Rules, 1944 vide the Order-in-Original dated 31.03.2011 by denying the benefit of Notification No. 120/84-C.E. to the appellant. As we have already held that the appellant is entitled to the benefit provided under Notification No. 120/84-C.E., as observed in the preceding paragraphs of this Order, we do not see any reason to sustain the demand of duty or penalty, as confirmed against the appellant vide the above order. Consequently, we set aside the impugned order dated 31.03.2011 and allow the appeal filed by the appellant against the same.

12. In the result, the impugned orders are set aside and the appeals are allowed, with consequential relief, if any, as per law.

(Order pronounced in the open court on **06.11.2025**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd