IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL Nos. E/751/2010,85987/2013

(Arising out of Orders-in-Appeal No. SB/21/Th-I/10 dated 5.2.2010 and No. BR/(276)Th-I/2012 dated 5.11.2012 passed by Commissioner of Central Excise (Appeals), Mumbai-I)

Dharamsi Morarji Chemical Co. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Thane-I **Respondent**

Appearance:

Shri Nazir K. Shaikh, Advocate, for appellant
Shri S. Hasija, Superintendent and Shri N.N. Prabhudesai, Superintendent (ARs), for respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of Hearing: 10.10.2018
Date of Decision: 10.10.2018

ORDER No. **A/87633-87634/2018**

Per: Mrs. Archana Wadhwa

As per the facts on record, the appellant is engaged in the manufacture of sulphuric acid, its derivative and fertilizers. A part of the sulphuric acid manufactured by them is being used in demineralisation of water, which is being used by them captively for further manufacture of their final product. The appellant was availing the benefit of captive consumption Notification No.67/95-CE dated 16.3.1995 in respect of demineralised water, which was further being consumed by them captively.

2. Revenue entertained a view that inasmuch as DM water is the appellant's final product and is exempted from payment of duty, they are not entitled to the captive consumption notification in respect of the sulphuric acid so used by them for mineralization of water. Accordingly, by way of issuance of show cause notice dated 23.10.2007, demand of duty to the extent of Rs.9,638/- was raised for the period October 2006 to August 2007, which stands confirmed by the impugned order along with imposition of penalties etc.

3. Learned Advocate for the appellant has drawn our attention to the manufacturing process, which is not disputed by the Revenue. For better appreciation, the same is reproduced below:-

> "To manufacture sulphuric acid, molten sulphur is burnt in the air and SO2 gas is generated. This SO2 gas is required to be converted to SO3 for the manufacture of sulphuric acid. These processes are highly exothermic – that is chemical change that is accompanied by a liberation/generation of heat. The temperature at the point of conversion of SO2 gas will be around 600 degrees cent. For the conversion of SO2 into SO3 the desired temperature level should be in the range of 400 degrees cent. To bring down the temperature to the desired level at the reaction vessel, water is

circulated in the exterior part of the reaction vessel, water is circulated in the exterior part of the reaction vessel and the heat is absorbed and temperature reduced accordingly. For the purpose of circulation the water, it is to be demineralised with the help of chemical, and for this purpose small quantity of sulphuric acid is used captively. Thus, the DM water (or demineralised water) is not a final product, it is in fact an intermediate product which is consumed in the factory of manufacture."

4. In view of the foregoing, it is the appellant's main contention that DM water is not their final product and the same is an intermediate product which is further consumed in the factory of manufacture. In such a scenario, the benefit of captive consumption notification is available to them.

5. Further, going through the impugned order and after hearing both the sides, we find that the issue is no more *res integra*. The Hon'ble Supreme Court in the case of *CCE, New Delhi vs. Hindustan Sanitaryware & Industries – 2002 (145) ELT 3 (SC)*, has dealt with an identical issue. It stands held by the Hon'ble Supreme Court that exemption to captive consumption of modvatable inputs is available even if intermediate product is exempt from duty, but final output is dutiable. As such it was held that plaster of paris used in making of moulds which in turn are used as inputs in relation to the manufacture of sanitaryware, would be

eligible to exemption under Notification No.217/87-CE, which was an exemption on account of captive consumption.

To the same effect is the Tribunal decision in the case of *Haldyn Glass Ltd. vs. CCE, Mumbai-IV – 2005 (187) ELT 263 (Tri.-Mumbai)*. Further, the Tribunal in the case of *IPCL Ltd. vs. CCE, Vadodara – 2004 (178) ELT 656 (Tri.-Mumbai)* and *Rashtriya Ispat Nigam Ltd. vs. CCE, Vishakapatnam – 2002 (150) ELT 743 (Tri.-Bang.)*, has held to the same effect.

6. Inasmuch as, admittedly, the DM water comes into existence during the course of manufacture of the final product and is used captively, the same has to be held as an intermediate product and not a final product. In such a scenario, the same would earn exemption of captive consumption Notification No.67/95-CE dated 16.3.1995.

7. By following the ratio of the above decisions, we set aside the impugned order and allow the appeal with consequential relief.

(Pronounced in court)

(Sanjiv Srivastava)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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