# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
## REGIONAL BENCH

## Excise Appeal No. 1841 of 2012

(Arising out of Order-in-Original No. 16/AT(16)COMMR/RGD/12-13 dated 05.09.2012 passed by Commissioner of Central Excise, Customs & Service Tax, Raigad)

**M/s. Hindustan Organic Chemicals Ltd.** **Appellant**
At & Post Rasayani, Dist. Raigad 410 207.

Vs.

**Commissioner of CGST & CE, Raigad** **Respondent**
Utpad Shulk Bhavan, Plot No.1, Sector 17,
Khandeshwar, Raigad 410 206.

Appearance:

Shri Vinay S. Sejpal, Advocate with Shri S.P. Agnihotri, Consultant, for the Appellant
Shri Sunil Kumar Katiyar, Assistant Commissioner, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**
**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**

Date of Hearing: 13.03.2023
Date of Decision: 13.03.2023

## FINAL ORDER NO. 85489/2023

PER: SANJIV SRIVASTAVA

This appeal is directed against Order-in-Original No. 16/AT(16)COMMR/RGD/12-13 dated 05.09.2012 passed by Commissioner of Central Excise, Customs & Service Tax, Raigad. By the impugned order, following has been held:-

*"ORDER*

*a) I confirm that the benefit of exemption from payment of excise duty under notification No. 64/95- CE is inadmissible and hence M/s. Hindustan Organic Chemicals Lad is liable for payment of excise duty till the period notification No. 7/2008- CE dated 01.03.2008 was issued which allowed exemption from payment of duty for the same.*

*b) I confirm the demand of central excise duty amounting to Rs. 1,04,63.364.00 (Rupees one crore four lakh twenty sixty three thousand three hundred sixty four only) on M/s. Hindustan Organic Chemicals Ltd and they shall pay the above amount forthwith.*

*c) I impose a penalty of Rs.1,04,63,364.00 (Rupees one crore four lakh twenty sixty three thousand three hundred sixty four only) on M/s. Hindustan Organic Chemicals Ltd under the erstwhile provisions of section 11 AC of the Central Excise Act, 1944/ sub-section (a) of Section 11AC of the Central Excise Act 1944.*

*d) I order recovery of interest at the appropriate rate on the central excise duty confirmed at Sr. No. (b) above under the provisions of section 11AB/section 11AA of the Central Excise Act 1944 and M/s. Hindustan Organic Chemicals Ltd shall pay the same forthwith."*

2.1 Appellant is engaged in the manufacture of organic chemicals falling under chapter heading 28 & 29 of the Central Excise Tariff Act, 1985. They cleared Di Nitrogen Tetroxide falling under tariff item No.2811.29.90 to ISRO at nil rate of duty availing exemption provided under Notification No. 64/95 as amended according to which the systems and sub-systems of launch vehicle meant for use in a launch vehicle project or a satellite project of ISRO are exempted from payment of central excise duty. Revenue entertained the view that Di Nitrogen Tetroxide is neither is system or sub-system but a consumable used for a launch vehicle and the said exemption is not available. Accordingly show cause notice dated 03.02.2011 was issued to the appellant asking them to show cause as to why:-

*(i) an amount of Rs.1,02,04,207.00 and higher education cess of Rs 2,04,084,00 and secondary & higher education cess of Rs.55,073.00 totally amounting to Rs.1,04,63,364.00 (Rupees one crore four lakh sixty three thousand three hundred sixty four only) availed wrongly under notification No.64/95 dated 16.03.1995 should not be demanded from them under proviso to*

*section 11A(1) of Central Excise Act, 1944 for the period January, 2006 to February, 2008 as detailed in the Annexure 'A' attached to the notice.*

*(ii) interest under section 11AB of Central Excise Act, 1944 should not be recovered from them.*

*(iii) penalty under section 11AC of Central Excise Act, 1944 should not be imposed on them as they have contravened the provisions of rule 4,6,8,10,11 and 12 of Central Excise Rules, 2002."*

2.2 This show cause notice has been adjudicated as per the impugned order. Aggrieved appellant has filed this appeal.

3.1 We have heard Shri Vinay S. Sejpal, Advocate with Shri S.P. Agnihotri, Consultant for the appellant and Shri Sunil Kumar Katiyar, Assistant Commissioner, Authorised Representative for the Revenue.

3.2 Arguing for the appellant, learned counsel submits that:-

- The issue involved in the present case is squarely covered by the clarification issued vide letter No. 151/7/91-CX.4 dated 15.07.1991.
- The same issue has been considered by the Tribunal in the case of Andhra Sugar Ltd. [2005 (192) ELT 493 (Tri.-Bang.)].
- Placing reliance on the above decision, the issue needs to be adjudicated in their favour.

3.3 Learned AR reiterates the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 For confirming the demand against the appellant, the impugned order records as follows:-

*"20. The facts of the case as incorporated in the notice in brief are that the noticee cleared DI Nitrogen Tetroxide to ISRO at nil rate of duty availing exemption provided under notification No.64/95 dated 16.03.1995, according to which the systems and sub-systems of launch vehicle meant for use in a launch vehicle project or a satellite project of the ISRO are fully exempted from whole of duty of excise leviable As DN Nitrogen Tetroxide is neither a system nor a sub-system but is a consumable used as an oxidizer for the propulsion system of satellite launching vehicle, the excise duty exemption is not admissible prior to the issue of notification No.7/2008 CE dated 01.03.2008. The notification No.64/95 has provided exemption to only 'systems and sub systems. The Di Nitrogen Tetroxide is only a consumable and cannot be considered as a 'system and sub-system for a launch vehicle and the noticee operating under the self assessment procedure should not have availed the said exemption. It was alleged that the notices has also not disclosed these facts to the department thereby contravening the provisions of rules 4, 6, 8, 10 & 11 with intent to evade duty. It was hence alleged that extended period under Section 11A(1) was invokable in this case besides penal interest and penalty.*

*21. It would be necessary at this juncture to read the relevant statutory provisions as the allegations and claims against the allegations by the noticee revolve around whether the benefit of exemption could be extended or not to the product Di Nitrogen Tetroxide under notification No.64/95. The relevant extract of notification No. 64/95 dated 16.03.1995 reads as under:*

| | *Description of goods* | *Conditions* |
|---|---|---|
| *(1)* | *(2)* | *(3)* |
| | *Stainless steel and sub-systems of launch vehicle and stainless steel sheets, systems and sub-systems of satellite Projects* | *(i) meant for use in a launch vehicle project or a satellite project of the Indian Space Research Organization or the Government of India, Department of Space, and*<br><br>*(ii) (ii) the manufacturer produces, before the clearances of the said goods, a certificate from an officer* |

| | | |
|---|---|---|
| | | *not below the rank of an Assistant Scientific Secretary in the Indian Space Research Organization giving the description and quantity of each type of the said goods for which the exemption under this notification is claimed and certifying that the said goods are intended for use in a project mentioned above.* |

*It can be inferred from the above that sub-systems of launch vehicle meant for use in a launch vehicle project of the ISRO can be exempted from payment of excise duty. But it cannot be inferred whether oxidizers like the product in question Di Nitrogen Tetroxide used for the propulsion system of satellite launching vehicle can be treated as sub-system of launch vehicle. I therefore, conclude that the scope of extending benefit of exemption for 'Di Nitrogen Tetroxide "in the above said notification No. 64/95 dated 16.03.1995 is not wide enough to allow benefit. The relevant extract of notification No. 13/97- CE dated 01.03.2007 reads as under-*

*“In the said notification, in the Table, against 5.No.7, for the entry in column (3), the following entry shall be substituted, namely:*

*"Components, raw materials, tools, lubricants and propellants, systems and subsystems of launch vehicles and satellite projects; scientific and technical instruments, apparatus, equipments (including computers). including their accessories, parts, spare parts, components and raw materials."*

*By the meaning of the term "against S.No.7, for the entry in column (3), the following entry shall be substituted", I tend to interpret that the earlier entry in Col No. 3 of the notification No. 64/95- CE viz. entry in column (3), does not imply that the aforesaid entries at col. No.(3) "If, (i) meant for use in a launch vehicle project or a satellite project of the Indian Space Research Organization or the Government of India, Department of Space, and (ii) the manufacturer produces, before the clearances of the said goods, a certificate from an officer not below the rank of an Assistant Scientific Secretary in the Indian) Space Research*

*Organization giving the description and quantity of each type of the said goods for which the exemption under this notification is claimed and certifying that the said goods are intended for use in a project mentioned above qualify for exemption of duty cleared to ISRO" appears to stand omitted. Hence scope of amendment notification No. 15/97- CE dated 01.03.2007 does not allow the benefit of exemption of excise duty to the said product Di Nitrogen Tetroxide. Further the relevant extract of notification No. 7/2008 dated 01.03.2008 states that:*

| *S.No.* | *Description of goods* | *Conditions* |
|---|---|---|
| *(1)* | *(2)* | *(3)* |
| *"7.* | *Components, raw materials, tools, lubricants and propellants for and including systems and sub-systems of launch vehicles and satellite projects; scientific and technical instruments, apparatus, equipments (including computers); including their accessories, parts, spare parts, components and raw materials* | *If,-<br><br>(i) meant for use in a launch vehicle project or a satellite project of the Indian Space Research Organisation or the Government of India, Department of Space; and<br><br>(ii) the manufacturer produces, before the clearances of the said goods, a certificate from an officer not below the rank of an Assistant Scientific Secretary in the Indian Space Research Organisation giving the description and quantity of each type of the said goods for which the exemption under this notification is claimed and certifying that the said goods are intended for use in a project mentioned above."* |

*It is only after the issuance of notification No. 7/2008, the scope of notification has wide to allow benefit of exemption of excise duty to the said product Di Nitrogen Tetroxide.*

*22. I find from the arguments by the noticee that the certificate issued by ISRO clarifies that Di Nitrogen Tetroxide cleared by them to ISRO is used as a sub-system in a launch vehicle project of the Indian Space Research Organization and as per the Sr. No.7 of notification No.64/95-CE these goods are exempted from payment of excise duty. In fact, the ISRO certificate as produced by the noticee does not clarifies as the noticee wishes. In fact,* *the certificate states that "the items for which exemption from payment of Excise Duty claimed are intended for use in system/sub-system of Launch Vehicle Projects of Indian Space Research Organization". The difference in the argument forwarded by the noticee and the wordings of certificate is obvious that Di Nitrogen Tetroxide is intended for use in system/sub-system and not this very item elf is system or sub-system. However, the notification exempts systems/sub-systems them payment of duty and not those items which are under the purview of the notification.*

*23. I find from their submissions that the noticee had denied all the charges and contested that the subject goods are cleared under exemption from payment of duty envisaged under Sr. No. 7 of the Notification No. 64/95-CE dated 16-04-1995 as it is part of propulsion system. They contended that the progason gem of a rocket includes all of the parts, the tanks, propellants ie fuel & oxidizer, pumps for injection, combustion chamber and rocket nozzle and hence eligible for benefit of exemption. This is merely an unacceptable and feeble justification by the noticee to hide their omissions. The said notification does not specify that oxidizers are part of propulsion system or sub-system. Hence the claim of the noticee is not justifiable. All the judicial or quasi-judicial decisions relied on by the noticee are quite irrelevant to the case in band as these decisions pertain to products other than the product discussed in the show cause notice and hence not relevant and hence unacceptable. And also the reliance on Board's circular No. 151/7/91/CX324 dated 15.07.1991 is irrelevant as it pertains to a period prior to the introduction of the discussing piece of edict."*

4.3 Di Nitrogen Tetroxide (N204) is used as an integral part of the satellite launching vehicle. Clarificatory letter dated 04.03.2003 was issued by the concerned officer of ISRO stating as follows:-

(1) (52)

द्रव नोदन प्रणाली केन्द्र
क्रय विभाग
वलियमला
तिरुवनन्तपुरम ६९५ ५४७

सत्यमेव जयते

GOVERNMENT OF INDIA
DEPARTMENT OF SPACE
LIQUID PROPULSION SYSTEMS CENTRE
Valiamala P.O
Thiruvananthapuram - 695 547, INDIA
Telephone : 0471 - 567540
Fax : 0471 - 567305
0472 - 800712

PURCHASE & STORES DIVISION

LPV/36/7135/01

4th March, 2003

M/s. Hindustan Organic Chemicals Limited
Harchandrai House,
81, Maharshi Karve Road
Mumbai - 400 002

Fax: 022 2059533/2087520

Attn: Mr. AS Didolkar, General Manager (Marketing)

Dear Sirs,

Sub: Supply of $N_2O_4$ - ED Exemption - reg.

This has reference to your letter HOC/MKD/N2O4 dated 3rd March 2003 enclosing a copy of Notice No. CERA/LAPXII-XIII/Feb.03/6 dated 18th February 2003 from AAO, CERA to Supt. Of Central Excise, Range Patalganga advising that Excise Duty to be levied on $N_2O_4$ supplied by you to us since $N_2O_4$ is neither 'system' nor 'sub-system' to satellite Launch Vehicle Project as envisaged in ED Exemption Notification No. 64./95 CE dated 16.3.1995.

Certainly $N_2O_4$, being oxidizer for the propellants viz. UDMH/MMH; form part of "Propulsion System" of a Launch Vehicle and hence eligible for duty exemption. In earlier occasions also, excise authorisites interpreted 'system' and 'sub-system' of Launch Vehicle projects in their own way and objected ED exemption to items like Aluminium Powder, Silver Zinc Batteries, Cables etc.

In this connection copies of the following landmark judgements are forwarded herewith:

1. No: 151/7/91/CX.4 dated 15th July 1991 of Ministry of Finance, Dept. of Revenue addressed to Collector of Central Excise, Thiruchirapally (with copies to all Collectors of Central Excise); which clearly states that 'Propulsion' is a system in Launch Vehicle.

(2) (53)

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2. Order dated 17.2.1989 by Collector of Central Excise (Appeals) Bombay, states that the certificate issued by an authority is not open to question and that the Excise Dept. is not within its right to question the technical authority who issued the certificate. The order also rightly interpreted 'system' quoting 20th Century Dictionary.

ED exemption for UDMH and MMH was also challenged by Excise Dept. and our suppliers' appeal based on the above evidences was admitted and recently Commissioner of Central Excise, Guntur had personal hearing on the appeal and a favourable verdict is expected.

We hope the above input would help you to give required clarification to the local Excise Authorities. Please keep us informed of the progress in the issue.

Thanking you,

Yours faithfully,

(SB Jayaram)
Head, Purchase & Stores

4.4 In respect of the same notification, Tribunal has in the case of Andhra Sugars Ltd. referred to by the counsel for the appellant, after taking note of the notification issued by the Board, held as follows:-

"***3.****A careful perusal of the above Notification reveals that systems and sub-systems of launch vehicle and systems and sub-systems of satellite projects are entitled for the benefit of Exemption Notification. There are two conditions given in the Notification. If the conditions are satisfied, the exemption should be allowed. In respect of UDMH, the exemption certificate given by ISRO is reproduced below :-*

*GOVERNMENT OF INDIA*

*DEPARTMENT OF SPACE*

*LIQUID PROPULSION SYSTEMS CENTRE*

*VALIAMALA, THIRUVANANTHAPURAM-695 547*

*Application Ref. No. Date: 24-3-2000*
*LPV/36/4965/99*

*EXCISE DUTY EXEMPTION CERTIFICATE*

| | | |
|---|---|---|
| *1* | *Name of the Centre/Project/ Unit* | *Liquid Propulsion Systems Centre* |
| *2* | *Notification under which Excise Duty Exemption is claimed* | *Ministry of Finance, Department of Revenue Notification No. 64/95-CE, dated 16-3-1995* |
| *3* | *Brief description of the systems/sub-systems* | *Unsymmetrical Dimethyl Hydrazine (UDMH)* |
| *4* | *The purpose for which it is used* | *UDMH is used as fuel in propulsion system of PSLV* |
| *5.* | *Name(s) and Address(es) of the Contractor/Manufacturer/Fabric a-tor* | *The Andhra Sugars Limited, Venkatarayapuram, Tanuku-534 215 West* |

| | | |
|---|---|---|
| | | *Godavari District A. P.* |
| *6.* | *Date and reference of the contract and value of the contract* | *LPV/36/4965/99/5467 9, dated 2-3-2000 Rs. 93,45,000/- (15.00 MT)* |
| *7.* | *Date of probable receipt of the system/sub-system* | *Before end of March, 2001* |
| *8.* | *Any other relevant information* | *NIL* |

*Certified that the system/sub-system in question is eligible for Excise Duty Exemption as per guiding principles conveyed by the Ministry of Finance, Department of Revenue Notification No. 64/95-CE, dated 16-3-1995.*

*Project Director/Group Director*

***CERTIFICATE***

*This is to certify that the systems and sub-systems for which exemption from payment of Excise Duty is claimed are meant for use in Launch Vehicle Project/Satellite Project of the Indian Space Research Organisation of the Government of India, Department of Space.*

*CONTROLLER LPSC/ISRO*

***4.****In respect of the other two products also similar Certificates have been issued by the Competent Authority. It is also seen that the appellants have been clearing the goods under a similar Exemption notification 405/86-CE, dated 8-9-1986 for a very long time. Suddenly, the Department felt that the goods supplied cannot be treated as system or sub-system for Satellite Projects and proceeded against the appellant for recovery of the amount of duty not paid on account of availment of the Exemption Notification.*

***5.****Shri K.S. Ravi Shankar, the learned Advocate brought to our notice the clarification issued by GOI in its letter No. 151/7/91-CX.32-4, dated 15-7-1991 addressed to the Collector of Central Excise, Trichy in connection with Notification No. 405/96. Paras* *(b) and (c) are very relevant. The Ministry has actually clarified that Silver Zinc Batteries form an integral part of AVIONICS system. It has also been clarified that Aluminium Powder and Silver Zinc Batteries form a sub-system. Paras (b) and (c) are reproduced herein below :-*

*(b) Silver Zinc batteries form an integral part of 'avionics system'. Since they are used for powering it, it should be regarded as sub-systems. Similarly, aluminium powder used as metallic fuel for launch vehicles will form a sub-system of the propulsion system.*

*(c) Aluminium Powder and silver zinc batteries cannot be treated as consumables in the launch vehicle project unlike petrol or battery in a motor car, which could be replaced any number of times. The operational life of a launch vehicle would be co-terminus with the operational life of aluminium powder or the Silver Zinc Batteries. If the batteries fail or the aluminium powder gets exhausted the launch vehicle mission comes to an end. The objective of a launch vehicle is to place a given dry load in orbit and thereafter, the launch vehicle is not available to the Department of Space. This objective is achieved by several systems/sub-systems including the required number of batteries and quantities of aluminium powder.*

***6.****In the light of the clarification issued by the Ministry, it is very clear that Rocket fuel should be considered as sub-system under Sl. No. 7 of the relevant Notification for use in launch vehicle project/satellite project of the Indian Space Research Organisation. The Certificates have been given by the competent authorities. The jurisdictional Central Excise officers have to accept the Certificates issued by Competent Authorities. They cannot question the same unless the Certificate is very absurd on the face of it. If the Certificate is unacceptable, then suitable reference should be made to the CBEC for clarification. The action of the Departmental Authorities in ignoring the Certificates issued by ISRO is not correct. The Bombay High Court, in the case of Bombay Chemicals Pvt. Ltd. v. Appellate Collector of Customs - 1990 (49) E.L.T. 190 (Bombay), has held that the Certificates granted by Director General of Technical*

*Development or Director of Industries under the Notification is binding and conclusive and the Department is not empowered to question such Certificates. The learned Advocate produced enormous literature in connection with rocket propulsion to impress upon the Bench that the fuel for rocket propulsion is a very essential sub-system. In any case, we do not find any merit in the impugned Orders-in-Original. Hence, we allow the appeals with consequential relief."*

5.1 As the issue is squarely covered by the Board circular and the above judgment of the Tribunal, we do not find any merits in the impugned order and set aside the same.

5.2 Appeal is allowed.

(Order pronounced in the open court)

**(Sanjiv Srivastava)**
**Member (Technical)**

**(Dr. Suvendu Kumar Pati)**
**Member (Judicial)**

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