

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
MUMBAI**

REGIONAL BENCH - COURT NO. I

**Excise Appeal No. 86168 of 2022**

(Arising out of Order-in-Appeal No. DL/240/RGD-APP/2021-22 dated 07.02.2022 passed by the Commissioner of CGST & Central Excise, Raigad (Appeals), Navi Mumbai.)

**Bharat Petroleum Corporation Limited**

Mahul, Chembur,  
Mumbai – 400 074.

**.... Appellants**

Versus

**Commissioner of CGST & Central Excise,  
Navi Mumbai Commissionerate**

16th Floor, Sector-19D  
Palm Beach Road, Vashi,  
Navi Mumbai – 400 705.

**.... Respondent**

Appearance:

Ms. Swati Agrawal, Advocate for the Appellants

Shri Rajiv Ranjan, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**

**HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/85805/2026**

Date of Hearing: 10.03.2026

Date of Decision: 10.03.2026

**Per: M.M. PARTHIBAN**

This appeal has been filed by M/s Bharat Petroleum Corporation Limited (BPCL), Mahul, Mumbai (herein after, referred to as "the appellants", for short) assailing the Order-in-Appeal No. DL/240/RGD-APP/2021-22 dated 07.02.2022 passed by the Commissioner of CGST & Central Excise, Raigad (Appeals), Navi Mumbai.

2. Brief facts of the case, leading to this appeal, are summarized herein below:

2.1 The appellants herein is engaged *inter alia*, in the manufacturer of petroleum products by refining of crude petroleum and marketing of various finished products viz., High-Speed Diesel (HSD), Motor Sprit (MS),

Superior Kerosene Oil (SKO), Aviation Turbine Fuel (ATF), Sulphur etc., by classifying the aforesaid products under Chapter 25, 27 of the First Schedule to the Central Excise Tariff Act, 1985. The appellants are registered taxpayers holding Central Excise Registration No. AAACB2902MXM036 for manufacture of aforesaid excisable goods on payment appropriate Central Excise duty and for compliance with Central Excise statute.

2.2 The excisable goods viz., HSD, MS and SKO manufactured at Mahul refinery are transported to their different depots situated at Manmad, Manglia, Mathura, Kota and Bijwasan through pipelines called Mumbai-Manmad-Bijwasan pipeline (MMBPL) from where sales to retailers takes place. The pipeline transfers of aforesaid goods on payment of applicable duty are made by the appellants in the form batch of shipments, following a sequential product-to-product pumping method, whereby at any one point of time only one product in the pipeline is pushed through. However, upon completion of pumping of one product, say HSD or MS, the other product i.e., SKO is introduced in the pipeline which pushes the other product without any positive segregation. Therefore, the line connected of each consignment of the products may comprise of a mixture of two products, during the time of shifting from one product to another, which is known as "interface" or "transmix" or "intermix" at the inter-junction of each batch of product. Such interface/transmix products are taken into specific tanks at the destination as per laid down safety norms and operational procedures has prescribed under Industry Quality Control Manual (ICQM).

2.3 As a conventional practice, the appellants were using SKO as an interface between MS and HSD, since intermixing of MS and HSD or HSD and MS will contaminate the entire product. The Department had interpreted that the offsetting of gain observed in one product say MS/HSD against the loss observed in another product say SKO, though the duty payable on the industrial SKO is higher than the duty payable on SKO meant for Public Distillation System (PDS), the duty payable on gain/surge shall be the duty payable on MS/HSD. Accordingly, show cause proceedings were initiated for recovery of Central Excise duty for the period January, 2015 to November, 2015 and December, 2015 to January, 2017. Therefore, for the subsequent period also, which is the relevant disputed

period in this case, Central Excise duty was demanded for an amount of Rs.29,37,024/- (Rs.28,66,930/- on account of SKO interfaced in MS/HSD and Rs. 70,094/- on SKO lost in transit) along with interest under Section 11A(4) of the Central Excise Act, 1944 by invoking the extended period of time and for imposition of consequent penalty under section 11AC ibid read with Rule 25 of the Central Excise Rules, 2002 vide Show Cause Notice (SCN) dated 28.05.2019.

2.4 In adjudication of the said SCN dated 28.05.2019, the jurisdictional Deputy Commissioner of CGST & Central Excise, Division-I, Navi Mumbai had confirmed the duty demands raised in the SCN, besides imposing of penalty under Section 11AC ibid read with Rule 25 ibid all the proposals made in the SCN vide Order-in-Original dated 31.03.2021. Being aggrieved with order of the original authority dated 31.03.2021, the appellants had filed an appeal before the Commissioner (Appeals). In disposal of the appeal, the learned Commissioner (Appeals) by upholding the order of the original authority had rejected the appeal filed by the appellants vide impugned order dated 07.02.2022. Feeling aggrieved with the impugned order, the appellants had preferred this appeal before the Tribunal.

3. Learned Advocate appearing for the appellants had submitted that the activity of mixing of SKO with MS or HSD is happening because of technical necessity, and such activity does not amount to manufacture in terms of Section 2(f) of the Central Excise Act, 1944 and hence the demand of duty is not sustainable. Further, the appellants though cleared the SKO for the purpose of PDS availing the duty exemption benefit, for the quantum of intermixed product SKO, they have been discharging the appropriate duty at the rate applicable for clearance of industrial SKO. Therefore, she submitted that demand of duty on such intermixed SKO, as though such products are MS/HSD is not legally sustainable. She further stated, that the issue under dispute is no more *res integra*, in view of the Final Order No. 87438-87440/2024 dated 11.12.2024 decided in the self-same appellants, which was also upheld by the judgement of the Hon'ble Supreme Court in the appeal filed by the department in Civil Appeal No.(s) 7405-7407/2025 dated 06.10.2025. Hence, she pleaded that the impugned order is not legally sustainable and consequently no penalty is imposable on the appellants.

4. Learned Authorized Representative appearing for the Department, on the other hand, reiterated the findings made in the impugned order and submitted that the demands are sustainable in view of the CBEC Circular No.636/27/2002-CX dated 22.04.2022. Therefore, he claimed that the impugned order is sustainable and appeal filed by the appellants cannot be entertained.

5. Heard both sides and perused the records of the case. We have also examined the submissions advanced by learned Advocate appearing for the appellants and the learned Authorized Representative of the Department..

6. The issue involved in this appeal is to examine whether the appellants are liable to pay Central Excise duty on intermingled SKO with HSD/MS, at the higher of the two duties i.e., duty payable on a SKO, not used for intended purpose of PDS and duty payable on surge/gain in HSD/MS, transit loss of SKO, during the disputed of February, 2017 to June, 2017; and whether the adjudged demands confirmed in the impugned order is legally sustainable.

7. We find that in this regard, on identical set of facts for the earlier periods of dispute i.e., January, 2010 to January, 2017 in the case of self-same appellants, the Co-ordinate Bench of the Tribunal have examined the disputed issue in detail and have passed the Final Order No. 87438-87440/2024 dated 11.12.2024 by dropping the adjudged demands. Similarly, in the case of identical facts of the disputed issue in the case of *M/s Hindustan Petroleum Corporation Limited Vs. Commissioner of Central Excise, Mumbai-II*, this Bench of the Tribunal vide Final Order No. A/86733/2025 dated 30.10.2025 have decided the case in favour of the appellants, by holding that the adjudged demands seeking confirmation of the excise duty on the 'intermixed SKO' by treating it as 'HSD/MS' is not sustainable and dropped the proceedings initiated against the appellants. The relevant paragraphs of the said order of the Tribunal are extracted and given below:

"8.2 On careful reading of the aforesaid legal provisions, it transpires that the central excise duty is a levy on manufacture or production of excisable goods which are specified in the First and Second schedule to the Central Excise Tariff Act, 1985. Further, it also transpires from the definition given for the phrase 'manufacture' in terms of Section 2(f) the Central Excise Act, 1944, that any process incidental or ancillary to the completion of the manufacture product, or, any process which is specified in relation to any goods in the Section of Chapter notes of the First schedule to the Central Excise Tariff Act as amounting to manufacture, applied on the goods can also be subject to levy of central

excise duty. Furthermore, it also transpires that the rate of duty at which a commodity is subjected for levy of Central Excise duty is determined as per the unique classification of such commodity under specific heading/sub-heading/tariff item provided under the First Schedule. On careful examination of the provisions of Section 3 of the Central Excise Act, 1944 it transpires that there is no legal provision for charging duty of excise at different rates on the same excisable goods.

8.3 In the present case, the three distinct products, during the transportation of which the intermixed SKO occurs and on which there is a dispute on the determination of appropriate central excise duty, are High-Speed Diesel (HSD), Motor Sprit (MS), Superior Kerosene Oil (SKO). The tariff classification of the above products under the First schedule to the Central Excise Tariff Act are as follows:

### **"CHAPTER 27**

### **MINERAL FUELS, MINERAL OILS AND PRODUCTS OF THEIR DISTILLATION; BITUMINOUS SUBSTANCES; MINERAL WAXES**

#### **Notes :**

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#### **Sub-heading Notes :**

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#### **Supplementary Note :**

In this Chapter, the following expressions have the meanings hereby assigned to them :

(a) "motor spirit" means any hydrocarbon oil (excluding crude mineral oil) which has its flash point below 25°C and which either by itself or in admixture with any other substance, is suitable for use as fuel in spark ignition engines. "Special boiling point spirits (tariff items 2710 12 11, 2710 12 12 and 2710 12 13)" means light oils, as defined in Sub-heading Note 4, not containing any anti-knock preparations, and with a difference of not more than 60°C between the temperatures at which 5% and 90% by volume (including losses) distil;

(b) "natural gasoline liquid (NGL)" is a low-boiling liquid petroleum product extracted from Natural Gas;

(c) "superior kerosine oil (SKO)" means any hydrocarbon oil conforming to the Indian Standards Specification of Bureau of Indian Standards IS : 1459 : 1974 (Reaffirmed in the year 1996);

(d) "aviation turbine fuel (ATF)" means any hydrocarbon oil conforming to the Indian Standards Specification of Bureau of Indian Standards IS : 1571 : 1992 : 2000;

(e) "high speed diesel (HSD)" means any hydrocarbon oil conforming to the Indian Standards Specification of Bureau of Indian Standards IS : 1460 : 2005;

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| Chapter Heading | Description of goods                                                                                                                                                                                                                                                                                                                                                     |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1)             | (2)                                                                                                                                                                                                                                                                                                                                                                      |
| 2710            | <b>Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils</b>                                                           |
|                 | <i>Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than those containing bio-diesel and other than waste oil:</i> |
| 2710 12         | <i>Light oils and preparations :</i>                                                                                                                                                                                                                                                                                                                                     |
|                 | <i>--- Motor sprit :</i>                                                                                                                                                                                                                                                                                                                                                 |
| 2710 12 11      | ---- Special boiling point spirits (other than benzene, toluol) with nominal boiling point range 55 - 115°C                                                                                                                                                                                                                                                              |
| 2710 12 12      | ---- Special boiling point spirits (other than benzene, benzol, toluene and toluol) with nominal boiling point range 63 – 70°C                                                                                                                                                                                                                                           |
| 2710 12 13      | ---- Other Special boiling point spirits (other than benzene, benzol, toluene and toluol)                                                                                                                                                                                                                                                                                |
| 2710 12 19      | ---- Other                                                                                                                                                                                                                                                                                                                                                               |
| xxx             | xxx xxx xxx                                                                                                                                                                                                                                                                                                                                                              |
| 2710 19         | -- <i>Other :</i>                                                                                                                                                                                                                                                                                                                                                        |
| 2710 19 10      | --- Superior kerosene oil (SKO)                                                                                                                                                                                                                                                                                                                                          |
| 2710 19 20      | --- Aviation turbine fuel (ATF)                                                                                                                                                                                                                                                                                                                                          |
| 2710 19 30      | --- High speed diesel (HSD)                                                                                                                                                                                                                                                                                                                                              |
| xxx             | xxx xxx xxx                                                                                                                                                                                                                                                                                                                                                              |

*From the classification of the impugned goods viz., SKO, HSD, MS provided under the First Schedule, it clearly emerges that each of the above goods are distinctly classified under 2710 1910 (SKO), 2710 1930 (HSD) and 2710 1211, 2710 1212, 2710 1213, 2710 1219 (MS). Further, in order to qualify commodity as MS or HSD, the relevant supplementary note has to be fulfilled in terms of technical specifications and BIS standards. The records placed in the case file do not provide any documentary evidence to show that intermix of SKO with MS/HSD have the characteristics of MS or HSD, in terms of the aforesaid supplementary note to classify the same as MS or HSD. Therefore, we are of the considered view that there is no possibility under the Central Excise tariff for classifying intermix of SKO with MS/HSD, as MS or HSD, for charging such product with the duty applicable for MS/HSD.*

8.4 We also find that from the facts of the case, that it is not in dispute that while clearing the goods, the appellants have cleared from the factory quantities of MS, HSD and SKO separately. Since all the three goods are supplied through a pipeline, the SKO get mixed with either MS or HSD. As per the provisions of Section 4 *ibid*, the excise duty is payable on the transaction value at the time of removal of the goods from the factory. In the present case, the goods cleared from the factory is MS/HSD and SKO. Accordingly, the duty on these products is payable as per price of the respective product prevailing at the time of removal of the goods. As regards MS and HSD, the duty was paid on the transaction value. As regards SKO, since the same was not sold but

meant for Public Distribution System (PDS), the duty was to be paid on the prevailing price of SKO on the basis of sale price prevailing for SKO for industrial purpose, which is higher than the price of SKO sold under PDS. Therefore, the correct price was adopted by the appellant while clearing the intermix quantity of SKO. The appellants vide letter dated 29.12.2015 had informed the Department that they had paid the differential duty of Rs.3,78,97,782/- on intermix SKO cleared for the disputed period October, 2014 to March, 2015 by treating the same as 'industrial SKO', since the same were not supplied to PDS for availing concessional duty. The appellants also informed the Department that the said duty paid could also be appropriated towards the duty liability as the same has been paid into the government exchequer. The sole reliance of the Adjudicating Authority for confirmation of adjudged demands is on the Board's Circular dated 22.02.2002. As there is no dispute in classification or the valuation of goods involved in the present case, such circular issued for the purpose of uniformity in assessment of excise duty cannot be applied in the present circumstances of the case.

9.1 We find that the dispute in the identical set of facts in the case of *M/s Indian Oil Corporation Ltd., Vs. Commissioner of Central Excise in Service Tax, Guwahati (supra)*, the Tribunal have held that duty on interface quantity of SKO cannot be demanded the rates applicable for HSD or MS. The relevant paragraphs of order of the Tribunal in the above case is extracted and given below:

"8. On careful reading of the above circular, we find that the Circular suggests that even on clearance of SKO, the price of HSD/MS should be applied. However, this proposal of the Board Circular does not flow from any statutory provision. As discussed above, the appellant have correctly applied the price of respective goods cleared from the factory at the time of removal. Therefore, we do not find any support of any statutory provisions in the Board Circular. The Hon'ble Supreme Court has time and again, held that the Board Circular cannot vitiate the law or the Board Circular cannot be issued contrary to the statutory provisions. We refer some of the judgements on this issue :

- a) 2008 (229) ELT 641 (SC) – *Sindur Micro Circuits Limited Vs. CCE, Belgaum.*
- b) 2009 (235) ELT 385 (SC) – *Atul Commodities Pvt. Ltd. Vs. CCE, Cochin.*
- c) 2003 (156) ELT 819 (Bom) – *NarndraUdeshi Vs. UOI*
- d) 2015 (326) ELT 26 (SC) – *DGFT Vs. Kanak Exports.*

9. In view of the above judgements, it is clear that the Board can only clarify the existing law but cannot create law by itself. Therefore, the above Board Circular dated 22.04.2002 having without having support of any Act or Rule, is not binding on the assessee.

10. As regards the issue that after removal of goods, intermixing of SKO with MS/HSD amounts to manufacture, we find that there is no charge in the Show Cause Notice that the activity of supplying HSD/MS with interface SKO amounts to manufacture. Therefore, on this point, the adjudication order travelled beyond the scope of show cause notice which is not permissible in the law. The Adjudicating authority has relied upon clause (iii) of Section 2(f) for holding that activity amounts to manufacture, which reads as under : -

"2(f) manufacture" includes any process:-

- (i) Incidental or ancillary to the completion of a manufactured product;

- (ii) Which is specified in relation to any goods in the Section or chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 (5of 1986) as amounting to manufacture; or
- (iii) Which, in relation to the goods specified in Third Schedule involves packing or re-packing of such goods in a unit container or labeling or relabeling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer.

*From the reading of the above clause, it is clear that the activity specified in the said clause (iii) will amount to manufacture only in respect of the goods specified under Third schedule. It is undisputed that the products of the appellant are not specified under third schedule, therefore, whatever activity mentioned in clause (iii) shall not apply to the goods which are not specified in Third schedule. For this reason, intermixing of SKO with HSD/MS does not amount to manufacture.*

*11. As per our above discussion, the differential duty demand raised on interface quantity of SKO is clearly not sustainable. Hence, the impugned orders are set aside and the appeals filed by the appellant are allowed with consequential benefits, if any."*

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*10. In view of the foregoing discussions and analysis, and on the basis of the orders passed by the Tribunal and Hon'ble Supreme Court, we are of the considered view that the impugned order dated 31.03.2015 in confirmation of the adjudged demands and consequent imposition of penalties on the appellants is not legally sustainable."*

8. We also find that the issue arising out of the present dispute is no more *res integra*, in view of the Final order relied upon by the appellants in the cases of self-same appellants in the case of *Bharat Petroleum Corporation Ltd. Vs. Commissioner of CGST, Mumbai East, Mumbai* was upheld by the Hon'ble Supreme Court in Civil Appeal No.(s) 7405 to 7407 of 2025 dated 06.10.2025. In view of the settled position of law, as discussed in those referred cases, and in view of the above judgement of the Hon'ble Supreme Court dated 06.10.2025, the issue arising out of the present dispute is no more open for any debate and as such, the impugned order passed by the learned Commissioner (Appeals) is liable to be set aside.

9. In view of the foregoing discussions and analysis, and on the basis of the orders passed by the Tribunal and Hon'ble Supreme Court, we are of the considered view, that the impugned order to the extent it had upheld the confirmation of adjudged demands by original authority is not legally sustainable.

10. In the result, the impugned order dated 07.02.2022 passed by the learned Commissioner (Appeals) is set aside and the appeal filed by the appellants is allowed in their favour.

(Operative portion of the Order pronounced in Open court)

**(S.K. MOHANTY)**  
**MEMBER (JUDICIAL)**

**(M.M. PARTHIBAN)**  
**MEMBER (TECHNICAL)**

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