CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Miscellaneous Application No. 85363 of 2024
(on behalf of Respondent)

AND

Excise Appeal No. 86130 of 2015

(Arising out of Order-in-Original No. 22/RN/COMMNR/M-II/2014-15 dated 31.03.2015 passed by the Commissioner of Central Excise, Mumbai-II)

Hindustan Petroleum Corporation Ltd. **.... Appellants**
Refinery Division, B.D. Patil Road,
Mahul, Mumbai – 400074.

Versus

Commissioner of CGST & Central Excise, Mumbai-II **.... Respondent**
9th Floor, Piramal Chambers
Lalbaug, Parel,
Mumbai – 400 012.

Appearance:

Ms. Mansi Patil, Advocate for the Appellants

Shri Shambhoo Nath, Special Counsel for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86107/2025

Date of Hearing: 18.03.2025
Date of Decision: 17.07.2025

Per: M.M. PARTHIBAN

This appeal has been filed by M/s Hindustan Petroleum Corporation Limited (HPCL), Refinery Division, Mahul, Mumbai (herein after, referred to as "the appellants", for short) assailing the Order-in-Original No. 22/RN/COMMNR/M-II/2014-15 dated 31.03.2015 (herein after, referred to as "the impugned order") passed by the Commissioner of Central Excise, Mumbai-II, Mumbai.

2. Revenue has filed this miscellaneous application bearing No.85363 of 2024, seeking change of name and address of the respondent arising on

account of change in jurisdiction of the Central Excise authorities. The prayer made by the Revenue is considered and accordingly, the Registry is directed to incorporate the following changed name and address of the respondent in the appeal records for the purpose of disposal of the appeal:-

> *"Commissioner of Central Goods Service Tax & Central Excise,*
> *Navi Mumbai Commissionerate,*
> *16th Floor, Satra Plaza, Sector -19D, Palm Beach Road,*
> *Vashi, Navi Mumbai – 400 705".*

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

3.2. 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), Lube Oil 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. AAACH1118BXM010 for manufacture of aforesaid excisable goods on payment of appropriate Central Excise duty and for compliance with Central Excise statue.

3.3 The excisable goods viz., HSD, MS and SKO manufactured at Mahul refinery are transported to their different depots situated at Vashi, Pakni, Lone and Hazarwadi through pipelines called Mumbai-Pune-Solapur pipeline (MPSPL) 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" 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).

3.4 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 mixed part of SKO and MS/HSD, as the case may be, quantified at higher values, was demanded for an amount of Rs.46,49,73,599/- along with interest under Section 11A(1) 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 09.09.2014. In adjudication of the said SCN dated 09.09.2014, learned Commissioner of Central Excise, upon examination of the various issues had confirmed the duty demands raised in the SCN, besides imposing of penalty for equal amount of duty demanded, under Section 11AC ibid read with Rule 25 ibid vide order dated 31.03.2015. Feeling not satisfied with the impugned order, the appellants had preferred this appeal before the Tribunal.

4.1 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, under 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 inter mixed product SKO, they have been discharging the appropriate duty at the rate applicable for clearance of industrial SKO. Therefore, he submitted that demand of duty on such inter mixed SKO, as though such products are MS/HSD is not legally sustainable in view of the judgements of the Hon’ble Supreme Court in the following cases:

(i) *State of Hariyana Vs. Dalmia Dadri Cement Ltd. - 2004 (178) E.L.T. 13 (S.C.)*

(ii) BPL Display Devices Ltd. Vs. Commissioner of Central Excise, Ghaziabad - 2004 (174) E.L.T. 5 (S.C.)

4.2 He further stated that the circular dated 22.04.2022 issued by CBEC, for payment of Central Excise duty on the highest value of HSD/MS for intermix product is contrary to the provisions of Section 4 ibid read with Rule 4 of ibid. In a similar set of facts occurred in the case of *Indian Oil Corporation Ltd., Vs. Commissioner of Central Excise in Service Tax, Guwahati* – 2019-TIOL-3843-CESTAT-KOL, the Tribunal have held that duty on interface quantity of SKO cannot be demanded the rates applicable for HSD or MS. Further, learned Advocate also submitted that in the case of appellants at Bathinda, the Chandigarh bench of the Tribunal in Final Order Nos. 60528-60529/2024 dated 18.09.2024 has set aside the confirmation of demands in similar cases. Hence, he pleaded that the impugned order is not legally sustainable and consequently no penalty is imposable on the appellants.

4.3 Learned Advocate relied upon the following judgments in support of their stand :-

(i) *Commissioner of Central Excise and Service Tax, Haldia Vs. Indian Oil Corporation Limited - Hon'ble High Court of Calcutta judgment dated 06.09.2024 in CEXA/8/2020.*

(ii) Hindustan Petroleum Corporation Ltd., Visakhapatnam – Order-in-Original No. VSP-EXCUS-COM-011-23-24 dated 31.10.2023

5. Learned Special Counsel 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 dated 22.04.2022. Therefore, he claimed that the impugned order is sustainable and appeal filed by the appellants cannot be entertained.

6. Heard both sides and perused the records of the case. We have also examined the submissions advanced by learned Advocate appearing for the appellant and the learned Authorized Representative of the Department. Further, we have also perused the additional written submissions in the form of paper books submitted by both sides along with citation of case laws which both sides have mentioned in support of their case.

7. 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,

during the disputed of August, 2009 to January, 2014; and whether the adjudged demands confirmed in the impugned order is legally sustainable.

8.1 In order to address the above issue, we would like to refer the relevant legal provisions contained in Central Excise Act, 1944 and Central Excise Rules, 2002 as it existed during the disputed period.

"Central Excise Act, 1944
Chapter II
Levy and Collection of Duty

Duty specified in the First and Second Schedule to the Central Excise Tariff Act, 1985 to be levied.
Section 3. *(1) There shall be levied and collected in such manner as may be prescribed*
(a) a duty of excise to be called the Central Value Added Tax (CENVAT) on all excisable goods (excluding goods produced or manufactured in special economic zones) which are produced or manufactured in India as, and at the rates, set forth in the First Schedule to the Central Excise Act, 1985 (5 of 1986):

xxx xxx xxx xxx

Provided *that the duty of excise which shall be levied and collected on any excisable goods which are produced or manufactured by a hundred per cent export oriented undertaking and brought to any other place in India, shall be an amount equal to the aggregate of the duties of customs which would be leviable under the Customs Act, 1962 (52 of 1962) or any other law for the time being in force, on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their value, the value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs Act, 1962 (52 of 1962) and the Customs Tariff Act, 1975 (51 of 1975).*

Explanation 1.—Where in respect of any such like goods, any duty of customs leviable for the time being in force is leviable at different rates, then, such duty shall, for the purposes of this proviso, be deemed to be leviable at the highest of those rates.

Valuation of excisable goods for purposes of charging of duty of excise*.*
4. *(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall—*
(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;
(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed

Explanation.—For the removal of doubts, it is hereby declared that the price-cum-duty of the excisable goods sold by the assessee shall be the

price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum-duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods.

(2) The provisions of this section shall not apply in respect of any excisable goods for which a tariff value has been fixed under sub-section (2) of section 3.

xxx xxx xxx xxx

3(c) "place of removal" means—
(i) a factory or any other place or premises of production or manufacture of the excisable goods;
(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;
(iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory;

(cc) "time of removal", in respect of the excisable goods removed from the place of removal referred to in sub-clause (iii) of clause (c), shall be deemed to be the time at which such goods are cleared from the factory;

(d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods."

Central Excise Tariff Act, 1985

"Duties specified in the First Schedule and the Second Schedule to be levied

Section 2. *The rates at which duties of excise shall be levied under the Central Excise Act, 1944 (1 of 1944) are specified in the First Schedule and the Second Schedule."*

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 :

xxx *xxx* *xxx* *xxx*

Sub-heading Notes :

xxx *xxx* *xxx* *xxx*

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;

xxx *xxx* *xxx* *xxx*

Chapter Heading	Description of goods
(1)	(2)
2710	**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**
	- *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:*
2710 12	*Light oils and preparations :*
	--- Motor sprit :
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	*-- Other :*
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 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 sole reliance of the Adjudicating Authority 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."

9.2 We further find that in a Civil Appeal filed by the department against the aforesaid order of the Tribunal, the Hon'ble Supreme Court has upheld the order of the Tribunal and held vide its judgement dated 14.09.2023 that the same require no interference. The extract of the said judgement is given below:

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4743-4745 OF 2022

COMMISSIONER OF CENTRAL EXCISE AND S.TAX GUWAHATI ....Appellant(s)

Vs.

M/S INDIAN OIL CORPORATION LTD. .....Respondent(s)

O R D E R

Having regard to the facts and circumstances of the case, we find no reason to interfere with these appeals. The appeals are accordingly dismissed.

.....J.
(S. RAVINDRA BHAT)

.....J.
(ARAVIND KUMAR)

New Delhi;
September 14, 2023.

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.

11. In the result, the impugned order dated 31.03.2015 passed by the learned adjudicating authority is set aside and the appeal filed by the appellants is allowed in their favour.

(Order pronounced in open court on 17.07.2025)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha