



सत्यमेव जयते

केंद्रीय कर आयुक्त (अपील)

O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,

वस्तु एवं सेवा

कर भवन,

सप्तर्षी मंजिल, पॉलिटेक्निक के पास,

आम्बावाडी, अहमदाबाद-380015

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Near Polytechnic,

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380015



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क फाइल संख्या : File No : **V2/61&62/GNR/2019-20/13138 To 13142**  
ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-48-49-19-20**

दिनांक Date : **28/11/2019** जारी करने की तारीख Date of Issue: **2, 12, 2019**

आयुक्त (अपील) द्वारा पारित

Passed by Commissioner (Appeals) Ahmedabad

ग आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश : **02/AC/EX/Meh/2019-20**  
दिनांक : **4/7/2019** से सृजित

Arising out of Order-in-Original: **02/AC/EX/Meh/2019-20**, Date: **4/7/2019** Issued by:  
Assistant Commissioner, CGST, Div: Mehsana, Gandhinagar Commissionerate,  
Ahmedabad:

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

**M/s. Alicid Organic Industries Ltd. & Shri Manish C Patel**

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

I. Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944, may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

\भारत सरकार का पुनरीक्षण आवेदन :

**Revision application to Government of India :**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.





- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।  
 (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनोंक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
 Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- पठबी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में दूसरा मंजिल, बहुमाली भवन, असारवा, अहमदाबाद, गुजरात 380016

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhavan, Asarwa, Ahmedabad-380016 in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.





(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1988 की धारा 35F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "माँग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."

II. Any person aggrieved by an Order-in-Appeal issued under the Central Goods and Services Tax Act, 2017/Integrated Goods and Services Tax Act, 2017/Goods and Services Tax (Compensation to States) Act, 2017, may file an appeal before the appropriate authority.





ORDER-IN-APPEAL

**M/s Alicid Organic Industries Ltd.**, Plot No.207-208, Village Hanumant Henduva, Opp. GUJCOMSOL, Near Khari River, Highway, Post Palvasana, Mehsana [hereinafter referred to as "M/s AOIL"] and **Shri Manish C Patel**, Director of M/s AOIL [hereinafter referred to as "Shri Manish"] have filed appeals against Order-in-Original No.02/AC/EX/Meh/2019-20 dated 04.07.2019 [for short-OIO] passed by the Assistant Commissioner of CGST, Division-Mehsana, Gandhinagar Commissionerate [hereinafter referred to as "adjudicating authority"].

2. Briefly stated, the facts of the case are that M/s AIOL are engaged in manufacturing of Recycled Waste Oil and Re-refined Used Oil. Investigation initiated by Director General of Central Excise Intelligence, Ahmedabad Unit [for short-DGCEI] against M/s AIOL revealed that M/s AIOL were procuring sludge/waste oil from various places and carry out process like vacuum distillation, filtration, heating and centrifuging and other process to produce re-usable fuel oil and re-refined used oil; that they sold the fuel oil so produced by them to traders and consumers in open market as re-cycled fuel oil/re-cycled industrial fuel oil and re-refined lube oil without payment of applicable duty though the products are excisable goods and classifiable under tariff heading 27101990, attracting central excise duty @14% adv. After due investigation, a show cause notice dated 05.07.2017 was issued to M/s AIOL for demanding duty of Rs.5,98,38,761/- for the period from June 2011 to March 2016. The said show cause notice was adjudicated by the jurisdictional Commissioner vide order dated 09.05.2017, by confirming the duty liability with interest and imposition of penalty against M/s AIOL and Shri Manish. The department further asked M/s AIOL to furnish details of clearance of their above said goods manufactured and cleared during April 2016 to June 2017. On the basis of details submitted by M/s AIOL, a further show cause notice dated 08.05.2018 was issued to them for [i] classifying the product under chapter heading 27101990 of Central Excise Tariff Act, 1985 (CET) as excisable goods; [ii] demand of Central Excise duty of Rs.48,28,209/- with interest; and imposition of penalty under Rule 25 of Central Excise Rules, 2002 (CER) on M/s AIOL and under Rule 26(1) of CER on Shri Manish. The adjudicating authority has confirmed the demand with interest and imposed penalty equal to the duty involved on M/s AIOL and also on Shri Manish.

3. Aggrieved with the impugned order, M/s AIOL and Shri Manish have filed the instant appeals on the grounds that:

M/s AIOL

- The impugned order has not correctly appreciated the process of manufacturing of recycled waste oil and re-refined used oil; that after processing on the waste/sludge/used oil, its characteristics or usage is not changed; therefore, the process undertaken by the appellant not amount to manufacture as no new different and distinct product emerges.





- Chapter note 4 of chapter 27 of CET is specifically applicable to used oil, which cannot be applied in case of waste oil/sludge oil; that even the case of used oil/lubricant oil also there is no transformation as a result of the process undertaken on the product and no new and different article having a distinctive name or character emerges.
- The removal of impurities from oil does not amount manufacture as held by Hon'ble Tribunal in case of Raj Petrochemical Industries [2001 (129) ELT 186]. They further relied on Hon'ble Tribunal's decision in case of M/s Ambika Refinery [2013 (296) ELT 249] and other various decisions of Hon'ble Tribunals.
- The penalty equal to the duty demanded imposed by the adjudicating authority is not correct as the instant case is not the case of fraud, collusion or suppression of fact. They relied on various case laws.

#### Shri Manish

- The department has not served any show cause notice or OIO to him in the instant matter.
- The adjudicating authority has not correctly appreciated that when penalty equal to duty is imposed on the company, no penalty on its director is imposable.
- In absence of any confiscation being proposed, no penalty under Rule 26 can impose on any individual.

4. Hearings in both the appeals were held and Shri N.R.Parmar, Consultant appeared on behalf of M/s AIOL and Shri Manish. He reiterated the ground of appeal for consideration.

5. I have carefully gone through the facts of the cases and submissions made by M/s AIOL and Shri Manish in the appeal memorandum as well as at the time of hearing. The issues to be decided in the matter are as to whether:

- [i] recycled waste oil and re-refined used oil manufactured and cleared by M/s AIOL is classifiable under chapter heading No.27101990 of CETA, attracting central excise duty as confirmed by the adjudicating authority or otherwise; and
- [ii] Penalty imposed on M/s AIOL and Shri Manish is correct or otherwise;

6. At the outset, I find that the issues involved in the instant appeals are based on show cause notice issued under Section 11 A(7) of Central Excise Act, 1944 for the period of April 2016 to June 2017 on the basis of information obtained by the department from M/s AIOL. I find that in this matter, a show cause notice dated 05.07.2016, involving period from January 2011 to March 2016 was issued to M/s AIOL by the jurisdictional Commissioner of CGST and also adjudicated by him, vide Order dated 11.05.2017, by classifying the goods in question under chapter heading 27101990 of CETA and also confirmed duty of Rs.5,98,38,761/- with interest thereof. He also imposed penalty of Rs.25,00,000/- on M/s AIOL and Rs.25,00,000/- on Shri Manish.

7. I observe that M/s AIOL engaged in the manufacture of Recycled Waste Oil and Re-refined Used Oil. During investigation of the case against M/s AIOL, it was





found by the DGCEI that M/s AIOL were procuring sludge/waste oil from various places and carry out process like vacuum distillation, filtration, heating and centrifuging and other process to produce re-usable fuel oil and re-refined used oil and the same were clearing in the name of Recovered Fuel oil and Re-refined Used oil. The main dispute in the matter is that whether the process carried out by M/s AIOL on the procured sludge/waste oil are amounts to manufacture or not. The contention of M/s AIOL is that they only remove impurities from oil procured and not emerges any new product; hence it is not amounting to manufacture as per Section 2(f) of Central Excise Act and liable for classification under CH 2710990 as waste oil. On other side, the department has contended that the goods viz sludge/waste oil which were brought by M/s AIOL cannot be marketed as such and the process carried out to achieve the resultant product i.e Recycled Waste Oil (Recycled waste oil) and Re-refined used oil is squarely covered under the definition of manufacture as defined under Section 2(f) of Central Excise Act and classifiable under CH 27101990 attracting central excise duty.

8. I find that the adjudicating authority has broadly discussed the process which was undertaken by M/s AIOL on the goods sludge/waste oil obtained by them. M/s AIOL has not disputed the said process which resulted the goods marketable as Recovered Fuel oil (Recycled waste oil) and Re-refined Used oil. I find that the DGCEI has carried out chemical examination of the above products at departmental laboratory which was not disputed by M/s AIOL at any stage. The test report states as under:

Recycled waste oil: *"this sample is in the form of Black Colour Viscous Liquid. It is mainly composed of mineral Hydro Carbon Oil. It confirms to the stringent parameters of fuel oil as specified in IS'1593' together with siliceous matter. It is other than waste oil."*

Re-refined used oil: *"the sample is in the form of Pale Yellow Coloured Viscous Liquid. It is mainly composed of mineral hydro carbon oil (more than 70%) and additives, flashing above 93.3 degree C (confirming, in terms of requirement of lubricating oil as per Central Excise Tariff). It is other than waste oil/used oil."*

9. The test result of the above products clearly stipulates that the Recycled Waste Oil falls under the category of Fuel Oil and R-refined used oil falls under the

category of Lubricating Oil and cannot be considered as waste oil. It is clear from the test report of Chemical Examiner that a new product other than waste oil emerges during the process carried out on sludge/waster oil. In the circumstances, the argument of M/s AIOL that no new products emerges during the process like vacuum distillation, filtration, heating and centrifuging etc does not have any merit.





10. I find that the adjudicating authority has classified the said products in question under chapter heading **27101990** of CETA, considering the process carried out by M/s AIOL amounts to manufacture as per definition under Section 2(f) of Central Excise Act. M/s AIOL has claimed the goods under chapter heading **27109900**. The description of goods classified under chapter 2710 is as under:

Tariff Item	Description of goods	Unit	Rate of duty
1	2	3	4
2710	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 biodiesel and other than waste oils:		
271019	other		
2710 19 10	Superior kerosine oil (SKO)	Kg	14%
27101920	Aviation Turbin Fuel (ATF)	Kg	14%
27101930	High Speed Diesel Oil (HSD)	Kg	14%
27101940	Light Diesel Oil	Kg	14%
27101950	Fuel Oil	Kg	14%
27101960	Base Oil	Kg	14%
27101970	Jute Batching Oil & Textile Oil	Kg	14%
27101980	B Lubricating Oil	Kg	14%
<b>27101990</b>	Other	Kg	14%
	Waste oil		
27109100	Containing polychlorinated biphenyls (PCBs), polychlorinated terphenyls (PCTs) or polybrominated biphenyls (PBBs)	kg	#
<b>27109900</b>	other	kg	#

# Rate of duty not indicated in the CET (Amendment Act), 2004.

Since the test report of the Chemical Examiner clearly states that the Recycled waste oil is other than waste oil and having stringent parameters of fuel oil as specified in IS '1953' together with siliceous matter; that the re-refined used oil is also other than waste oil and confirms to the terms of requirement of lubricating oil, I do not find any merit in classifying the goods under chapter heading 27109900 as claimed by M/s AIOL. Therefore, it is rightly classifiable under chapter heading 27101990 as claimed by the adjudicating authority.

11. M/s AIOL has further contended that even if the goods in question is classified under CH 27101990, the question still remains the same as to whether any new product emerges or otherwise. It is their vehement argument that no new product emerges due to the process viz vacuum distillation, filtration, heating and centrifuging and other process carried out, as due to these process they remove only impurities from sludge/waste oil and no new product having distinct characteristics emerge. They relied on various case laws in this regard.

12. I find that the chapter note 4 of chapter 27 of CETA states that "In relation to lubricating oils and lubricating preparations of heading 2710, labelling or marking of containers or packing from bulk packs to retail packs or the adoption of





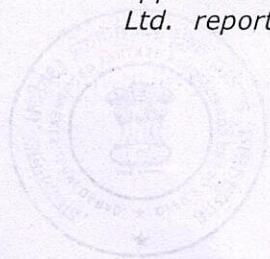
any other treatment to render the product marketable to the consumer, shall amount to "manufacture". As per this chapter note the goods are amount to manufacture and thereby excisable, if undergone any process listed above. The manufacturing process in details were narrated at para 38 of the impugned order by the adjudicating authority which is not in dispute. As per manufacturing process, the recycling of waste oil means reclamation of oil by way of treatment to separate solids and water from waste oil, which could be done by filtering, gravity filtering, centrifuging, heating, dehydration and viscosity and specific gravity adjustment. Likewise, the re-refined of used oil emerge from waste oil after undergone process viz. pre-treatment, dehydration, distillation at moderate vacuum, distillation at high vacuum, bottom residue removal and clay treatment. From the manufacturing process, it is observed that the resultant products emerge after treating the 'waste oil' at various stages, so as to make them marketable. In the circumstances, the process carried out by M/s AIOL to make the goods in question are squarely covered under the definition of "manufacture" as defined under Section 2(f) of Central Excise Act.

13. I find that M/s AIOL has relied on various case laws which were not made applicable to the instant case by the adjudicating authority, stating that the decisions are distinguishable on the facts. Since in the present case, the goods manufactured and cleared by M/s AIOL are not 'waste oil' as established from chemical test report and it is also clear from the chapter note 4 of chapter heading 27 that the process treatment to render the product marketable amounts to manufacture, I also find that the case laws cited by the are distinguishable. M/s AIOL has further relied on the decision of Hon'ble Tribunal, Bangalore in the case of M/s Cee Jee Lubricants [2010 (251) ELT 439] and the Hon'ble Supreme Court's decision in case of M/s Mineral Oil Corporation [2002 (140) ELT A 248] as an identical issue which are applicable to their case. On perusal, I observe that both the decisions are distinguishable. In case of Cee Jee Lubricants supra, I find that the Principal Bench of Hon'ble Tribunal, Delhi has distinguished the said decision while deciding a stay application in case of M/s IFP PETRO PRODUCTS PVT. LTD [2014 (300) E.L.T. 550 (Tri. - Del.)]. The Hon'ble held that:

*10. The decision of the Tribunal that is relied upon by the appellant in the case of Cee Jee Lubricants (supra) has not at all dealt the object of Chapter Note-4 of Chapter 27. Therefore, when amendment to the tariff entry under Chapter 27 was made for no consideration of statute law, renders the decision to be per incuriam. It appears that Tribunal has not passed earlier stay order contrary to the law when para-8 thereof is read.*

*11. The Chapter Note using the word 'treatment' has widened the scope of that entry to cover within its fold all process adopted to render that process to be manufacture.*

*12. By a preliminary survey, prima facie it appears that there is no balance of convenience in favour of appellant and the process of treatment adopted by appellant was manufacture following Apex Court decision in Oracle Software India Ltd. reported in 2010 (250) E.L.T. 161 (S.C.), and Kesarwani Zarda Bhandar*





*reported in 2008 (227) E.L.T. 337 (S.C.) = 2009 (13) S.T.R. 95 (S.C.). It may be stated that the legislative entry and chapter note should be interpreted in a manner to achieve the object sought to be achieved by that note without defeating object thereof. ...."*

In the case of Hon'ble Supreme Court's decision supra, I find that the Hon'ble Apex Court has affirmed the decision of Hon'ble Tribunal, New Dlehi's decision in case of M/s Mneral Oil Corporation [1999 (114) ELT 166]. The Hon'ble Tribunal has decided the issue of reclamation of transformer oil from used transformer oil does not amount to manufacture so as to attract levy of Central Excise duty afresh pertaining to the period of 1996 i.e prior to introduction of chapter note 4 of chapter 27 of CETA supra w.e.f 12.05.2000. Therefore, looking into the test report of the products and chapter note 4 supra, the decisions are not applicable to the instant appeal.

14. In view of above, I hold that the recycled waste oil and re-refined used oil manufactured by M/s AIOL are excisable products and the adjudicating authority has correctly classified the products under chapter heading 27101990 of CETA. Accordingly the duty demanded for the periods in question is upheld with interest.

15. As regards imposition of penalty on M/s AIOL, I find that the adjudicating authority has imposed penalty of Rs.48,28,029/- i.e equal to the duty confirmed, under Rule 25 of Central Excise Rule, 2002. Rule 25 of the Rule stipulates a penalty, subject to provisions of Section 11 AC of Central Excise Act, not exceeding the duty on the excisable goods in respect of which any contravention of the provisions of the said rule has been committed by the manufacturer or rupees five thousand, whichever is greater. I find that the demand raised in the instant appeal is subsequent to the show cause notice issued by the jurisdictional Commissioner for the period from June 2011-to March 2016. I also find that the while confirming the demand of Rs.5,98,38,761/- for the said periods, the Commissioner has imposed penalty equal to the duty confirmed under Section 11 AC of Central Excise Act and Rs.25,00,000/- under Rule 25 of Central Excise Rules. Looking into such circumstances, the penalty of Rs.48,28,029/- equal to the duty confirmed, imposed by the adjudicating authority in subsequent periods is uncalled, especially in a circumstances when the jurisdictional Commissioner has not imposed penalty equal to the duty confirmed, under Rule ibid. Therefore, looking into the facts and circumstances of the case, the penalty imposed under Rule 25 of Central Excise Rule is reduced to Rs.4,00,000/-.

16. Now, I take the appeal filed by Shri Manish. Shri Manish has filed the said appeal against imposition of penalty. The adjudicating authority has imposed penalty of Rs.48,28,029/- under Rule 26 of Central Excise Rules, 2002 on Shri Manish on his active involvement in clearance of goods manufactured without payment of duty. So far his involvement as a Director of M/s AIOL in manufacture





and clearance of goods without payment of duty, I find that his role was surfaced by the investigating authority in the show cause notice 05.07.2016, covering periods of 2011 to 2016 and accordingly, the Commissioner has imposed a personal penalty of Rs.25,00,000/- on Shri Manish vide his order dated 11.05.2017. Again, a personal penalty of Rs.48,28,029/- imposed by the adjudicating authority on Shri Manish for his involvement in clearance of goods involved in subsequent periods is uncalled and inconsiderate, especially the issue involved in the matter is relating to classification of goods and duty liability thereof. Looking into the facts and circumstances of the case discussed above, I do not find any merit in imposing penalty on Shri Manish under Rule 26 of Central Excise Rule in a circumstance when jurisdictional Commissioner has already penalized him in the same issue. Therefore, I set aside the penalty imposed on Shri Manish.

17. In view of above discussion, I partially allow the appeal filed by M/s AIOL and allow the appeal filed by Shri Manish. Both the appeals stand disposed of in above terms.

*Nath*  
20/11/19

(Gopi Nath)

Commissioner (Appeals)

Date : 11.11.2019

Attested

(Mohan V.V)  
Superintendent (Appeal),  
Central Tax, Ahmedabad.



**BY R.P.A.D**

To

M/s Alicid Organic Industries Ltd.  
Plot No.207-208, Village Hanumant Henduva,  
Opp. GUJCOMSOL, Near Khari River,  
Highway, Post Palvasana, Mehsana

Shri Manish C Patel,  
Director of M/s Alicid Organic Industries Ltd.  
Plot No.207-208, Village Hanumant Henduva,  
Opp. GUJCOMSOL, Near Khari River,  
Highway, Post Palvasana, Mehsana

**Copy to:-**

1. The Principal Chief Commissioner, CGST Zone, Ahmedabad.
2. The Commissioner, CGST, Gandhinagar.
3. The Asstt. Commissioner, (Systems), CGST, Hq., Gandhinagar
4. The Assistant Commissioner, CGST, Mehsana Division.
5. Guard file.
6. P.A file.