

# SUPREME COURT OF INDIA

Commissioner of Central Excise, Mumbai-IV

Vs.

Damnet Chemicals Pvt. Ltd.

C.A.Nos.3821-23 of 2005

(Tarun Chatterjee and B. Sudershan Reddy JJ.)

10.09.2007

## JUDGMENT

### **B. SUDERSHAN REDDY, J.**

1. These appeals preferred under Section 35L(b) of the Central Excise Act, 1944 (hereinafter referred to as 'the Act') are directed against a common order dated 22.12.2004 passed by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as 'CESTAT') West Regional Bench, Mumbai by which Appeal Nos.

E/304/2004, E/314/2004 and E/315/2004 filed by the respondent-assessee were allowed.

2. The facts briefly stated are as follows:

3. The respondents - M/s. Danmet Chemicals Pvt. Ltd.

(hereinafter referred to as 'DCPL') were manufacturing the products 'CRC 2-26 Aerosol' and 'CRC Acryform Aerosol' since 1983. They were claiming exemption under Notification No. 120/84-CE dated 11.5.1984 for the product 'CRC 2-26' and SSI exemption under Notification No.

175/86-CE dated 1.3.1986 for the product 'CRC Acryform'.

In their declarations they claimed the classification of the products 'CRC 2-26' under Chapter 2710.99 and 'CRC Acryform' under Chapter 3203.40.

4. On the basis of the material gathered during the routine transit checks and other information the Department issued show cause notice dated 12.2.1993 to the respondent-assessee calling upon it to show cause as to why Central Excise duty of Rs. 56,69,872.80p should not be demanded and recovered for the period 26.2.1988 to 24.10.1992. In the said show cause notice mainly 4 issues were raised, namely:

(i) That the product 'CRC 2-26' was not a blended lubricating oil and was, therefore, not entitled to the benefit of Notification No. 120/84-CE dated 11.5.1984;

(ii) That the product 'CRC Acryform' was not entitled to the benefit of Notification No. 175/86CE dated 1.3.1986 inasmuch as the product carried on it the brand name/trademark of a person not entitled to the benefit of the Notification;

(iii) That the respondent-assessee was a dummy or a fagade of Bharat Bijlee Ltd. (for short 'BBL') and also that the respondent and BBL were related persons and that therefore the price at which BBL sold the respondent's products should be taken as the assessable value;

(iv) That the respondent-assessee had suppressed the facts with intent to evade duty and therefore the proviso to Section 11A (1) of the Act had been invoked.

5. The Department issued 12 six-monthly show cause notices between 27.10.1997 to 3.4.2003 for the period April, 1997 to 31.10.2002, demanding an aggregate amount of Rs. 22,55,444/-

6. The matter was initially adjudicated by the Commissioner (Adjudication) vide order dated 31.8.1998 which was challenged by the respondent-assessee in appeal and the Tribunal having set aside the order of the Commissioner remitted the case to the Commissioner for de novo adjudication. Accordingly, the Commissioner adjudicated all the show cause notices vide his order dated 31.10.2003 whereby and whereunder it was held that the respondent-assessee is not entitled to exemption of duty under Notification No. 120/84-CE for the product 'CRC 2-26' and exemption under Notification No. 175/86-CE in case of product 'CRC Acryform'.

7. Aggrieved by the said decision the respondent- assessee filed an appeal against the aforesaid order dated 31.10.2003 passed by the Commissioner, Central Excise, Mumbai-IV. The CESTAT decided all the issues that had arisen for its consideration and accordingly allowed the appeal preferred by the respondent-assessee. We shall refer to those issues adjudicated by the CESTAT in detail appropriately. Being aggrieved by the decision of the Tribunal, Commissioner of Central Excise, Mumbai-IV preferred these appeals.

8. We have heard Shri Vikas Singh, learned Additional Solicitor General for the appellant and Shri D. B. Shroff, learned Senior Counsel for the respondent-assessee.

9. Elaborate submissions were made by both the counsel. We have perused the orders passed by the Commissioner as well as the Tribunal. We have also gone through the material available on record.

10. The learned Additional Solicitor General mainly contended that the product 'CRC 2-26' manufactured by the respondent-assessee cannot be characterized as lubricating oil as it was predominantly anticorrosive in nature and was used for air conditioners, panel boards and other electrical and electronic gadgets primarily to prevent corrosion and for improving electrical properties. It was also submitted that the respondent-assessee was not entitled to SSI exemption for 'CRC Acryform' since the respondent-assessee manufactured and cleared goods in the brand name of M/s. BBL and also the logo of M/s. CRC Chemicals Europe. Further submission was that DCPL and BBL are related persons and relation led to under valuation of the goods. The respondent-assessee is guilty of suppression of facts warranting invocation of the extended period.