

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

103

**CM-7330-CII-2022 in/and
CEA-19-2022 (O&M)
Date of decision:16.02.2023**

**COMMISSIONER CENTRAL EXCISE COMMISSIONERATE,
ROHTAK**

.... Appellant

Versus

M/S INDIAN OIL CORPORATION LTD., PANIPAT AND ANOTHER

.... Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

HON'BLE MRS. JUSTICE MANISHA BATRA

Present : Mr. Anshuman Chopra, Sr. Standing counsel with
Mr. Deepak Kakkar, Advocate for the appellant.

Mr. Amrinder Singh, Advocate for the respondent.

RITU BAHRI, J. (oral)

CM-7330-CII-2022

Learned counsel for the appellant states that an amendment has been made vide notification dated 07.02.2006 issued by the Office of Commissioner Central Excise, Shillong, as per Rule 11.2, Excise duty @ 16% is being imposed on sulphur recovered as by-product in refining of crude oil, falling under tariff item 2503 00 10. Sulphur falling under this tariff item for manufacturer of fertilizers will continue to be exempted.

After 2006, sulphur recovered as by-product has become taxable and hence any other product which is used for production of sulphur which is fully exempted from duty and therefore, the same would not be eligible for cenvat credit.

Since in the present case, these benefits have already been given in 2006 by the Tribunal while allowing the appeal titled as M/s Indian Oil

Corporation Vs. CCE, Rohtak on 16.10.2012 with respect to the assessment year 2005-06. In paragraph 5 of the said order dt.16.10.2012, the observation has been made as under:-

“We have considered the submissions from both the side and perused the records. The undisputed facts are that in terms of ISI Standards prescribed for HSD Oil, its Sulphur content should not be more than 0.25%. Therefore, if the crude oil has higher sulphur content, as a result of which, the HSD oil obtained by refining of crude oil also has sulphur content much higher than that prescribed in the ISI Specifications, the same would have to be removed. In course of de-sulphurisation process, the HSD Oil is reacted with hydrogen in presence of catalyst in course of which the sulphur present in the HSD reacts with hydrogen to form Hydrogen Sulphide. The MDEA is used for dissolving the Hydrogen Sulphide gas so formed. Subsequently, the MDEA containing dissolved hydrogen sulphide is transformed to Amine recovery unit where the MDEA and hydrogen sulphide are separated. Since the Hydrogen sulphide, being a poisonous gas, cannot be released in the atmosphere, in accordance with Pollution Control norms, the same is required to be processed in Sulphur Recovery Unit where the sulphur is recovered from the Hydrogen Sulphide. From the above process to which HSD is subject to for removal of sulphur, it is clear that role of MDEA is only in removal of sulphur. This chemical is not used in the Sulphur Recovery Unit. It is used only in the de-sulphurisation process which is necessary for manufacture of HSD conforming to the ISI standards which alone can be marketed. Therefore, the MDEA has to be treated as an input used in or in relation to the manufacture of HSD oil. In our view, it will be totally wrong to treat the MDEA as an input used for manufacture of sulphure as this chemical has no role to play in the recovery of sulphur from Hydrozen Sulphide in the Sulphur Recovery Unit. In view of this, impugned order denying the cenvat credit in this item is not sustainable. The same is set aside. The appeal is allowed.”

Since as per notification dated 07.02.2006, cenvat credit has been given and the present appeal has been filed after a huge delay of 3039 days in re-filing, no ground is made out to entertain the application as well as main appeal.

In view of the above, the application for condonation of delay of 3039 in re-filing, is hereby dismissed.

Main case

Since the application seeking condonation of delay of 3039 days in re-filing the appeal has been dismissed, present appeal also dismissed.

Pending application, if any, also stands disposed of.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

16.02.2023

Jyoti-IV

Whether speaking/reasoned: Yes/No.
Whether reportable : Yes/No