CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 21576 of 2016

(Arising out of Order-in-Appeal No. MYS-EXCUS-000-APP-010-16-17 dated 26.07.2016 passed by the Commissioner of Central Excise (Appeals), Mysore.)

M/s. Peenya Industrial Gases Pvt. Ltd.,
Plot No. 74B & C,
Hootagalli Industrial Area,
Mysore – 570 016. — Appellant(s)

VERSUS

The Commissioner of Central Excise, Mysore Commissionerate
S1 & S2, Vinaya Marga,
Siddartha Nagar,
Mysore – 570 011. — Respondent(s)

With

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APPEARANCE:

Mr. Raghavendra B. Hanjer, Advocate for the Appellant

Mr. Akshay Kumar, Superintendent (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order No. 21430 -21431 /2025

DATE OF HEARING: 16.04.2025
DATE OF DECISION: 16.09.2025

DR. D.M. MISRA

These two appeals are filed against Order-in-Appeal No.MYS-EXCUS-OOO-APP-010-16-17 dated 26.07.2016 passed by the Commissioner of Central Excise (Appeals), Mysore.

2. Briefly stated the facts of the case are that the appellant are engaged in the trading of various industrial gases viz. Argon, Carbon-Di-Oxide, Hydrogen, Oxygen, Nitrogen and Dissolved Acetylene during the relevant period. These goods are procured in liquid form and are transported in special vacuum insulated storage tankers. They used to receive Oxygen and Nitrogen in bulk quantities in tankers, store them and refill them into smaller retail cylinders and converting the goods from liquid form to gaseous form at the time of refilling. Alleging that the Oxygen and Nitrogen gases which were received in bulk in tankers in liquid form from different manufacturers and transferred to storage tanks in the appellant's premises and refilling the same into smaller cylinders amounts to manufacture, show-cause notices dated 06.07.2013 for the period from 01.06.2008 to 31.03.2013 and 28.01.2014 for the period 01.04.2013 to 01.06.2013, were issued to the appellant for recovery of differential duty of Rs. 39,69,023/- along with interest and penalty. On adjudication, the demands were confirmed with interest and penalty. Aggrieved by the said orders, they filed appeals before the learned Commissioner(Appeals) who in turn rejected their appeals. Hence these appeals.

3. At the outset, the learned advocate for the appellant has submitted that they receive gases in bulk quantity, store them in

their premises, then refill them into smaller retail cylinders and while refilling, they convert it from liquid form to gaseous form as the goods are sold in gaseous form only. They also receive Oxygen and Nitrogen gases in small cylinders only and sold to the customers in the same cylinders where no process is undertaken by them. He has submitted that the process undertaken by the appellant does not amount to manufacture in view of the Circular No.910/30/2009-CX dated 16.12.2009 wherein it is clarified that activity of receiving gases in bulk and packing them in retail packs would not fall under the scope of the Chapter Note as the activity carried out is not repacking. Further, he has referred to the judgment of the Hon'ble Supreme Court in the case of CCE, Vadodara Vs. Vadilal Gases Ltd. [2017(346) ELT 147 (SC)] wherein the Hon'ble Supreme Court interpreting Note 10 of Chapter 28 endorsing the judgment of the Tribunal in the case of Ammonia Supply Company Vs. CCE, New Delhi [2001(131) ELT 626 (Tri. Del.)], held that transfer of gases from the bulk tankers to smaller cylinders would not fall within the scope of the said Chapter Note 10 of Chapter 28 of the Central Excise Tariff Act, 1985.

4. Learned AR for the Revenue has reiterated the findings of the learned Commissioner(Appeals).

5. Heard both sides and perused the records.

6. The short issue involved in the present case for consideration is whether transferring the Oxygen and Nitrogen gases received in bulk quantity in tankers into smaller MS cylinders resulted into 'manufacture' within the scope of Chapter Note 9 of Chapter 28 of Central Excise Tariff Act, 1985.

7. The said Chapter Note 9 to Chapter 28 reads as follows:-

> 9. In relation to products of this Chapter, labelling or relabelling of containers or repacking 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".

8. We find that after introduction of the Chapter Note 10 to Chapter 29, which is *pari materia* with Chapter Note 9 of Chapter 28, Board has issued a Circular dated 16.12.2009, which reads as follows:-

Circular No. 910/30/2009-CX., dated 16-12-2009
F.No. 6/3/2009-DS(CX 1 & 4)
Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject : Clarification regarding labelling and repacking etc. amounting to manufacture.

It has been brought to the notice of Board that certain dealers are receiving liquid chemicals in bulk in containers and offloading the same at the dealers' premises or godown into drums of 200 ltrs for subsequent marketing of these materials to customers. Doubts have been raised as to whether such activity would amount to manufacture in terms of Chapter Note 10 to Chapter 29. As the said Chapter Note has been amended in 2008 budget, it has been contested that the said activity is covered by the present wordings of the Chapter note. The relevant portions of the chapter note reads as under :

Before Amendment (1-3-2008)
10. In relation to products of this Chapter, labelling or relabelling of containers and repacking 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'.

After amendment (1-3-2008)
10. In relation to products of this Chapter, labelling or relabelling of containers or repacking 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'.

2. Whether an operation amounts to repacking from bulk packs to retail packs or not, is a question to be decided on facts. However before examining the implication of the substitution of word 'and' by 'or', it is necessary to examine whether the activity itself is covered by term repacking from bulk packs to retail packs. Hence the first issue which needs to be decided is whether the "container/ lorry tanker" can be considered as bulk pack.

3. Tribunal has in the case of *Ammonia Supply Co.* [2001 (131) E.L.T. 626 (T)], held that "As per Note quoted above, labelling or re-labelling of the container should take place at a time when the goods are

packed from bulk packs to retail packs. The assessee was not getting Ammonia in bulk packs. They were getting it in tankers. Ammonia gas brought in tankers can never be termed as brought in bulk packs. So the assessee was not repacking the goods from bulk packs to retail packs. Accordingly the activity undertaken by the assessee in filling the smaller container from bulk container namely tankers can never fall within the fiction of manufacture as envisaged by Note 10 quoted above."

4. Therefore the tankers cannot be termed as bulk packs and therefore the activity of transferring the goods from tankers into smaller drums cannot be said to be covered by the said chapter note 10.

5. Pending cases may be disposed of accordingly.

6. Hindi version will follow.

8. In the said circular, it is clarified that transferring Ammonia gas from bulk container viz. tankers into smaller retail packs would not fall within the fiction of manufacture. Also, we find that the Hon'ble Supreme Court in the case of CCE, Vadodara Vs. Vadilal Gases Ltd. (supra), distinguishing the earlier judgment in the case of Air Liquide North India Pvt. Ltd. [2011(271) ELT 321 (SC0], observed that gas coming in tankers were not bulk packs; hence, repacking and relabelling into smaller packs would not amount to manufacture under Chapter Note 10 of Chapter 29 of the CETA, 1985. Their Lordships endorsing the judgment of the Tribunal in the case of Ammonia Supply Co. (supra), held as follows:-

8. The above issue need not detain the Court. We have a decision of the learned Tribunal in *Ammonia Supply Company* v. *CCE, New Delhi* - 2001 (131) E.L.T. 626 (Tri.-Del.), wherein the Tribunal has taken the view that *Amonia coming in tankers cannot be treated to have come in bulk packs*. In this regard, there is also a Circular dated 8-10-1997 where this question has been dealt with by the Ministry of Finance (Department of Revenue) in the following way :-

> "In this context clarification have been sought regarding the scope of the expression "relabelling of containers and repacking from bulk packs". Doubts have been raised as to whether receiving of liquid chemicals in bulk in containers and offloading the same at the dealers premises or godown into available empty vessel and consequent delivery of these material in the very same condition to customers against orders can be held to be an act of repacking operations as envisaged in the said chapter note or not.

> Whether an operation amounts to repacking or not, is a question to be decided on facts. However, activity such as simply transferring the material from one container to another container may not be categorised under the scope of this description. The goods are packed either for wholesale or for retail sale. *Generally the expression "Packing" is considered as package containing a prepacked commodity and the quantity of product contained therein is also pre-determined*. The packing is also generally done without the purchaser being present. The packages also contain information such as name of the manufacturer, quantity, value and other details of the product."

9. The decision of the learned Tribunal in *Ammonia Supply Company* (supra) has attained finality as the Department had not challenged the same.

10. Having read the relevant part of Note 10 of Chapter 28 of the Tariff Act, the reasoning adopted by the learned Tribunal in *Ammonia Supply Company* (supra) and the contents of the Circular dated 8-10-1997, we are of the view, that the conclusion of the learned Tribunal, as above, does not suffer from any infirmity which would require our interference.

9. In view of the above, we do not find any merit in the impugned order. Consequently, the impugned order is set aside and the appeals are allowed with consequential relief, if any, as per law.

(Order pronounced in Open Court on 16.09.2025)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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