

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2355 OF 2019

COMMISSIONER OF CENTRAL EXCISE  
AND S.T. CHANDIGARH

Appellant(s)

*VERSUS*

M/s. SURYA AIR PRODUCTS PVT. LTD.

Respondent(s)

**ORDER**

1. We have heard learned counsel for the appellant as well as learned counsel for the respondent-assessee.

2. Briefly stated, the facts of the case are that the respondent-assessee is engaged in the marketing of hydrogen gas cylinders and is operating a unit adjacent to SIEL Chemical Complex, Rajpura, which manufactures hydrogen gas. The respondent-assessee receives 99.9% pure hydrogen gas from SIEL through a pipeline at a pressure of 1000 to 1200 mmwc. This gas is then filtered, dehydrated, compressed, and filled into returnable cylinders marked with the respondent-assessee's identification, which are subsequently sold to various consumers. Initially, the respondent-assessee was registered with the excise department as a manufacturer of excisable goods.

3. The respondent-assessee contends that in the year 2006, they discovered that other businesses involved in similar activities were not paying excise duty and were instead registered as traders. Consequently, on 23.11.2006, the respondent-assessee wrote to the Assistant Commissioner, Central Excise Division, Patiala, expressing their intention to surrender their manufacturing licence and obtain a trading licence for hydrogen gas. According to the respondent-assessee, the compression and bottling of hydrogen gas did not constitute manufacturing, as it did not alter the classification of hydrogen gas under the Central Excise Tariff Act.

4. In response, the Superintendent, Central Excise, Range II, Rajpura, on the same day, requested the respondent-assessee to confirm whether their operations fell under Section Note 9 of Chapter 28, which considers certain processes as manufacturing. On 08.12.2006, the respondent-assessee confirmed that their process involved only compressing and filling hydrogen into cylinders without any treatment to render the product marketable. They stated they were neither labelling nor relabelling containers nor repacking from bulk to retail packs and subsequently surrendered their manufacturer's registration.

5. The appellant revenue, however, took the view that the filling and

marketing of hydrogen gas cylinders with labels constituted manufacturing as per Chapter Note 9 of Chapter 28. This led to the issuance of a show cause notice dated 08.10.2010 invoking the extended period of limitation, raising a demand of Rs. 3,17,82,267/- in excise duty and proposing an equal amount as a penalty. The respondent-assessee contested this notice, arguing that their activities did not amount to manufacturing. However, after hearing the parties, the Jurisdictional Commissioner confirmed the demand along with interest and imposed a penalty of an equal amount vide order dated 08.07.2011.

6. Being aggrieved, the respondent-assessee approached the CESTAT by filing an appeal in Appeal No. E/2363/2011-DB against the said order passed by the Commissioner dated 08.07.2011. Vide impugned order dated 20.03.2018, the CESTAT allowed the appeal preferred by the respondent-assessee and set aside the order dated 08.07.2011, holding that the activity undertaken by the respondent-assessee does not amount to manufacture and therefore, the respondent-assessee is not liable to pay duty.

7. Being aggrieved, the appellant revenue has preferred this instant appeal.

8. In the instant case, the process involved is that the gas received

by the appellant through the pipeline has some accumulation of moisture and in order to remove the same from the gas, the compressor has an inbuilt system of drying the moisture. The treatment employed by the respondent-herein is oil filtration for the removal of moisture from gas by drying the inbuilt system of compressing gas into the cylinders. The said process, in our view, does not amount to a manufacturing process.

9. In the circumstances, we do not find any merit in the appeal. Hence, the appeal is dismissed. No costs.

In view of dismissal of the appeal, the pending application(s) does not require any further consideration and stands disposed of.

.....J.  
**(B.V. NAGARATHNA)**

.....J.  
**(DIPANKAR DATTA)**

**New Delhi;**  
**July 16, 2024**

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.2355/2019

COMMISSIONER OF CENTRAL EXCISE AND S.T. CHANDIGARH Appellant(s)

VERSUS

M/S SURYA AIR PRODUCTS PVT. LTD. Respondent(s)

Date : 16-07-2024 This appeal was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA  
HON'BLE MR. JUSTICE DIPANKAR DATTA

For Appellant(s) Mr. N Venkataraman, A.S.G.  
Mr. Mukesh Kumar Maroria, AOR  
Mr. T.S. Sabarish, Adv.  
Ms. Monica Baenjamin, Adv.  
Ms. Aakansha Kaul, Adv.  
Mr. Adit Khorana, Adv.  
Mr. Rupinder Sinhmar, Adv.  
Mr. Rupesh Kumar, Adv.  
Mr. Kritagya Kait, Adv.  
Mr. G. S. Makker, Adv.

For Respondent(s) Mr. P.P. Malhotra, Sr. Adv.  
Mrs. Sonia Malhotra, Adv.  
Mr. Gaurav Sharma, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The appeal is dismissed in terms of the signed order.

In view of dismissal of the appeal, the pending application(s) does not require any further consideration and stands disposed of.

(KRITIKA TIWARI)  
SENIOR PERSONAL ASSISTANT

(Signed order is placed on file)

(MALEKAR NAGARAJ)  
COURT MASTER (NSH)