

AUTHORITY FOR ADVANCE RULINGS
(CENTRAL EXCISE, CUSTOMS & SERVICE TAX)
NEW DELHI

PRESENT

Mr.Justice P.V. Reddi (Chairman)
Mr.A. Sinha (Member)
Mrs. Chitra Saha (Member)

Thursday, the Eleventh December of Two Thousand Eight

Ruling No. AAR/07(CE)/2008

IN
Application No.AAR/12(CE)/2007

Applicant	M/s Royal Energy Limited New Era House, Mogul, Matunga (West) Mumbai-400 016
Commissioner concerned	Commissioner of Central Excise, Customs & Service Tax, New Panvel, Raigad (Maharashtra)
Present for the applicant	Mr. Vishwanath Shukla, Advocate Mr. R.K. Hasija, Advocate Mr. L. Badri Narayanan, Advocate - from M/s V. Lakshmi Kumran & V. Sridharan & Others Advocates, New Delhi
Present for the Commissioner	Mr. A.N. Sharma, Jt. CDR Mr. A.P.S. Suri, Jt. CDR Ms. Archana .P. Tiwari, Jt. CDR Mr. Sumit Kumar, SDR

R U L I N G

(by Mr. A. Sinha)

M/s Royal Energy Limited, a company incorporated in India, has filed this application under section 23(C) of the Central Excise Act, 1944 (the Act). The applicant states that it is setting up a joint venture with a non-resident company, namely M/s Emerging Asia Clean Energy Fund, Netherlands to

carry out, what it calls, jatropha biotech operations in India. The joint venture shall engage itself in jatropha plantation, extraction of jatropha oil from its seeds and production of pure bio-diesel (methyl ester) therefrom. The pure bio-diesel so obtained will then be mixed with petro-diesel (hydrocarbons) to produce a bio-diesel blend which will be a mixture of pure bio-diesel (methyl ester) (60%) and petro-diesel (hydrocarbons) (40%). The applicant initially stated that the finished product, i.e. the blend, would fall under CETH No. 2920 90 58 of the Central Excise Tariff Act, 1985 (CETA). The applicant sought ruling of this Authority on the following question:

“What is the duty payable on a product which is a blend of 60% by weight of bio-diesel and 40% by weight of petro-diesel ? As this blend falls under CETH 2920 9058, it should attract the duty applicable on bio-diesel.

2. The Commissioner of Central Excise, Customs & Service Tax, Raigad, who is the jurisdictional Commissioner in this case, stated in his comments that, though the applicant had obtained central excise registration, it had not commenced production so far. He also stated that the finished product (blend) would be classifiable under Chapter 38 of the CETA. In response to the comments of the Commissioner, the applicant filed written submission, in which it conceded that the finished product would indeed fall under Chapter 38 of CETA. After hearing arguments on preliminary issues, we reframed the question as follows:

(1) *Whether the product proposed to be manufactured by the applicant by blending bio-diesel (methyl ester) and petro-diesel in the ratio of 60% & 40% falls under the Tariff Heading No. 38 24 9090 of the Central Excise tariff?*

- (2) *Whether process of manufacture is involved before the product in question emerges?*
- (3) *Whether the applicant can invoke the exemption under Notification No. 4/2007?*

3.

3.1 The applicant states that as pure bio-diesel has corrosive properties which causes faster wear and tear in the diesel engine, the world over bio-diesel is sold as a blend of pure bio-diesel and petro-diesel. The applicant explains the process of obtaining the finished product. First, pure bio-diesel (methyl ester) will be produced from jatropha oil by the process of transesterification. The pure bio-diesel will then be blended with petro-diesel in the desired ratio to obtain the blend, i.e. the finished product. The process of blending will be carried out either at applicant's own facility or pure bio-diesel will be transported in tankers to petrol pumps where it will be mixed in the underground diesel storage tanks. According to the applicant, the blending activity would not amount to manufacture, as no new product would emerge. Bio-diesel and diesel present in the blend would not interact with each other to produce a new product. No chemical reaction between them would take place. The two would remain separate and retain their separate properties. The resulting blend would not have a new and distinct name, characteristics or use. The activity of blending cannot also be characterized as labelling, re-labelling or repacking from bulk packs to retail packs. The applicant relies on a number of decided cases, including *U.O.I. vs. Delhi Cloth*

and *General Mills Ltd.*¹ for this proposition. The applicant has also filed some technical literature in support of its case.

3.2 The applicant further states that the finished product, i.e., bio-diesel blend, will attract 'nil' rate of duty under Notification No. 4/2007-CE dated 1.3.2007. According to it, recognizing the importance of bio-diesel as a renewable source of fuel, the notification is designed to provide incentive to the production and use of bio-diesel. The applicant also submits that if the proposed blending activity is regarded as manufacture, then the applicant will have to pay duty twice over, as it will not get any input credit for the duty paid on diesel; it will first pay duty on petro-diesel and then on the bio-diesel blend(finished product).

4. The jurisdictional Commissioner states that the process of blending of bio-diesel with petro-diesel amounts to manufacture, and the blend would meet the requirements of IS1460 'Automotive diesel fuel – Specification'. He also states that the benefit of the exemption notification No. 4/2007-CE dated 1.3.2007 cannot be extended to the finished product of the applicant, inasmuch as the exemption is meant for pure bio-diesel which is distinct from the blended mixture of pure bio-diesel and petro-diesel. According to the Commissioner, the said notification only exempts alkyl esters of long chain fatty acids, in their pure form, obtained from vegetable oils, commonly known as bio-diesel, and not all esters and their products. In the case of the applicant, methyl ester is an intermediate product, which is then mixed with petro-diesel. Thus the finished product of the applicant does not strictly

¹ 1977 (1) ELT (J199)

conform to the description of goods specified in the exemption notification. The jurisdictional Commissioner also files expert opinions of Indian Oil Corporation, Indian Institute of Petroleum, Indian Institute of Technology, Delhi and Mumbai and some technical literature, in relation to bio-diesel/bio-fuel.

5. Since under section 3 of the Act the duty of central excise is leviable on excisable goods which are produced or manufactured in the country, we may first ascertain whether the process of blending in the instant case amounts to manufacture or production. The expression '*manufacture*' has been defined in section 2(f) as follows:

“Section 2(f) of CE Act

SECTION 2. Definitions.— *In this Act, unless there is anything repugnant in the subject or context, -*

(a) to (e) **x x x x x x x x**

(f) **“manufacture”** includes any process, -

(i) *incidental or ancillary to the completion of a manufactured product;*

(ii) *which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to manufacture; or*

(iii) *which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer, and the word “manufacturer” shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;”*

The above provision gives an inclusive definition of manufacture. In the absence of a conceptual definition, the courts have interpreted the expression 'manufacture' in a number of cases. A Constitution Bench of the Supreme Court in *UOI vs. Delhi Cloth and General Mills Ltd. (supra)* held that manufacture means bringing into existence a new substance and does not mean merely to produce some change in a substance. The court observed -

"The word 'manufacture' used as a verb is generally understood to mean as "bringing into existence a new substance" and does not mean merely "to produce some change in a substance, however minor in consequence the change may be."

The above decision of the Apex Court has held the field ever since and has been followed in the subsequent decisions. This is evident from the following observation of another Constitution Bench of the Supreme Court in *Ujagar Prints Etc. vs. UOI and Others*² :

" The prevalent and generally accepted test to ascertain that there is 'manufacture' is whether the change or the series of changes brought about by the application of processes take the commodity to the point where, commercially, it can no longer be regarded as the original commodity but is, instead, recognized as a distinct and new article that has emerged as a result of the processes"

The Court also observed in *Delhi Cloth and General Mills Ltd. case (supra)* that the new article that emerges in the process of manufacture should be such as is known to the market. Later, a Division Bench of the Supreme Court in *UOI vs. Parle Products Pvt. Ltd.*³ was pleased to observe:

"The question whether the process involved in converting the "aluminium-foil" into "paper-backed aluminium-foil" amounts to manufacture within the meaning of S. 2(f) of the Central Excises and Salt Act, 1944, or not, turns

² 1988 (38) ELT 535(SC)

³ 1994(74) ELC 492(SC)

*upon **whether as a result of the application of the process a new and commercially distinct article, known to the market as such, emerges at the end.** This, in turn, depends upon the evidence as to the requisite transformation of the goods into a new and different article having distinct identity and character or use.” (emphasis supplied)*

6.

6.1 It is seen from the technical literature filed before us that bio-diesel refers to a non-petroleum based diesel fuel consisting of long chain of alkyl (methyl or ethyl) esters made by transesterification of vegetable oil or animal fat, which can either be used alone or in blend with petro-diesel in automobiles. Blends of bio-diesel and petro-diesel are also commonly known as bio-diesels and are denoted by B factor. B5, B10 and B20 (containing 5%, 10% & 20% respectively of pure bio-diesel) are commonly being marketed abroad. B20 is a blend of 20% pure bio-diesel and 80% petro-diesel. For using this blend, existing diesel engines do not require any modification. But the blends containing higher percentage of pure bio-diesel may require suitable engine modifications. On the basis of the B factor indicated above, the proposed blend of the applicant would be known as B60, and its use may require engine modifications.

6.2 World-wide the use of bio-diesel is being encouraged as an alternative fuel mainly for energy security reasons. Its use can reduce a nation's dependence on mineral oil which is sought to be replaced by the use of locally available renewable resources. Bio-diesel is a clean fuel producing less pollution. By reducing greenhouse environmental emissions, bio-diesel can also help in reduction of global warming. But on the flip side of it, bio-diesel

would be costlier, its production would entail diversion of agricultural land and edible seeds and modification of existing diesel engines.

6.3 The Government of India has also announced a national policy on bio-fuel, a few salient features of which are that: bio-diesel will be produced from non-edible seeds which will be grown in waste/degraded land. It is also a stated policy of the Government that no taxes and duties should be levied on bio-diesel.

7. According to the expert opinions of the Indian Oil Corporation (Research and Development Centre), Indian Institute of Petroleum, Indian Institute of Technology, Delhi and Indian Institute of Technology, Mumbai, blending of pure bio-diesel with petrol-diesel results in a physical mixture, that is to say, no chemical reaction is involved in this process. The blend contains alkyl esters of long chain fatty acids as also hydrocarbon compounds, such as paraffins, naphthenes, aromatics and olefins. It can no longer be called either pure alkyl long chain fatty acids or pure hydrocarbons. Though it is a physical mixture, but it is different from pure bio-diesel and petrol-diesel. According to IIT, Mumbai, the blending is done to improve the physical properties to take advantage of the properties of the bio-diesel without having to modify the engine. Bharat Petroleum Corporation has stated that blending of bio-diesel with diesel is not allowed at petrol pump. We notice that Indian standard specifications exist for B100 bio-diesel.

8. It is evident from the above that in the process of blending, both pure bio-diesel and petro-diesel lose their individual identities and a new product

emerges. The proposed bio-diesel blend would be a product commercially different from its parent compounds in chemical composition, characteristics and use. It will not have only methyl ester or only hydrocarbons, but will contain both the compounds. Whereas petro-diesel is classifiable under Chapter 27 and pure bio-diesel classifiable under Chapter 29, this blend is classifiable under Chapter 38. It will thus be a new product. It will be a cleaner fuel because of better emission standards. It will also be bio-degradable. But it will have certain associated disadvantages as well, such as engine incompatibility, adverse impact on availability of foodgrains and costlier than diesel. Different blends of bio-diesel are already being marketed abroad. There is a Government policy in place to encourage production and use of bio-fuels. All this goes to show that bio-diesel blends are commercially known in India. Thus the criteria laid down by the courts for treating a process as a manufacturing activity is satisfied in this case. In view of this, the proposed blending process of the applicant would amount to manufacture and the resultant blend would be excisable goods.

9.

9.1 Adverting to the question of classification, the applicant submitted in its application that bio-diesel blend would come under CETH No. 2920 90 58, and would thus be duty free. But the Revenue pointed out that only separately defined organic compounds would be classifiable under this Chapter. The bio-diesel blend would appropriately come under CETH No. 38249090 in view of HSN Explanatory Note in relation to this Chapter.

9.2 We notice that CETA does not specifically include bio-diesel under any tariff heading. Chapter 27, includes mineral fuels and mineral oils. Though CETH No. 2710 19 30 includes high speed diesel oil, but heading 2710 states that only petroleum oil containing by weight 70% or more of petroleum oil is included under this heading. The proposed blend containing only 40% of petro-diesel, would clearly be outside this heading. We may now turn to Chapter 29 which contains organic chemicals. Chapter Notes 1(a)&(b) read as follows –

“1. Except where the context otherwise requires, the headings of this Chapter apply only to:

- (a) separate chemically defined organic compounds, whether or not containing impurities;*
- (b) mixtures of two or more isomers of the same organic compounds, whether or not containing impurities; except mixtures of acyclic hydrocarbon isomers (other than stereoisomers), whether or not saturated (chapter 27), “*

As we have already seen, the bio-diesel blend is not a separate organic compound, but a physical mixture of different organic compounds, namely methyl ester and hydrocarbons which have different chemical compositions. As such, this blend cannot be called ‘separate chemically defined organic compound’ as contemplated in (a) above. Now, coming to (b) above, it refers to mixtures of two or more isomers of the same organic compound. As per Wikipedia, *‘isomers are compounds with the same molecular formula but different structural formulae’*. The New Encyclopedia Britannica, Vol.6, 15th Edition states - *‘isomerism, the existence of sets of two or more substances that have identical chemical compositions and molecular weight but different properties. The different substances that make up these sets are called*

isomers". As we know, methyl esters and hydrocarbons do not have the same chemical composition. According to Wikipedia- *'Esters consist of an inorganic or organic acid in which at least one -OH (hydroxyl) group is replaced by an O-alkyl (alkoxy) group'*. On the other hand, according to Wikipedia, *'in organic chemistry, a hydrocarbon is an organic compound consisting entirely of hydrogen and carbon'*. Thus, methyl ester and hydrocarbons are not isomers of each other, and the proposed blend of the applicant is not a mixture of two isomers of the same organic compound. As such, the bio-diesel blend in question would not come under (b) either.

9.3 Chapter 38 includes miscellaneous chemical products. Chapter Note 1(a) states -

*"This chapter does not cover:
(a) separate chemically defined elements or compounds with the exception of the following:"*

We are not concerned with the exceptions referred to in (a) above. CETH No. 3824 does not cover separately defined chemical compounds, but includes chemical products containing mixture of natural products, not elsewhere specified or included. Here also there is no specific entry in respect of bio-diesel blend. But the residuary entry contained in CETH 3824 90 90 refers to *'others'*. As per Harmonized Commodity Description System (HSN) Chapter Note No. 48, this residuary entry includes *"so called bio-diesel"* and used, as fuel in motor engines. The relevant provisions of HSN are extracted below-

**"CHAPTER 38
MISCELLANEOUS CHEMICAL PRODUCTS**

Chapter Notes.....

x x x x x x x x x x"

10. Coming to the issue of exemption, it is seen that Notification No. 4/2007-CE dated 1.3.2007 amends Notification No. 4/2006-CE dated 1.3.2006 issued under section 5A of the Act. This section empowers the Central Government to exempt, in public interest, an excisable goods, wholly or partly, from the duty of excise, subject to the conditions, if any, that may be specified.

The operative part of the Notification dated 1/3/2006 is as under-

“In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts excisable goods of the description specified in column (3) of the Table below read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading or sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Central Excise Tariff Act), as are given in the corresponding entry in column (2) of the said Table, from so much of the duty of excise specified thereon under the First Schedule to the Central Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table and subject to the relevant conditions specified in the Annexure to this notification, and the Condition number of which is referred to in the corresponding entry in column (5) of the Table aforesaid.

Explanation.-For the purposes of this notification, the rates specified in column (4) of the said Table are ad valorem rates, unless otherwise specified.

Table

S.No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
(1)	(2)	(3)	(4)	(5)
1.	x x	x x x	x	x
2.	x x	x x x	x	x

“

The above notification was later on amended vide Notification No. 4/2007 CE dated 1.3.2007 which amended certain entries of the Table. The relevant portion of the amending notification dated 1.3.2007 is given below-

“XX”

(1)	(2)	(3)	(4)	(5)
“53A	29 or 38	Alkyl esters of long chain fatty acids obtained from vegetable oils, commonly known as bio-diesels.	Nil	

XX”;

It is seen that the above notification unconditionally exempts alkyl esters of long chain fatty acids obtained from vegetable oils and falling either in chapter 29 or 38, from the whole of excise duty. The notification refers to the exempted goods as ‘commonly known as bio-diesel’. The expression ‘bio-diesel’ has neither been defined in the notification nor in the Act. The Budget Bulletin 2007 with reference to Central Excise and Service-tax published by Directorate of Publicity and Public Relations, Customs, Central Excise and Service-tax, in its explanatory notes states the following in relation to bio-diesel-

“29.3. Excise duty on bio-diesel (alkyl esters of long chain fatty acid from vegetable oils falling under chapter 29 or 38) has been fully exempted. (S.No. 53A of the Notification No. 4/2006-Central Excise as inserted vide Notification No. 4/2007-Central Excise refers)”

11. At this juncture, it would be apt to refer to the relevant rules of interpretation. The duty of a court is to discover the true intention of the legislature. In the ordinary course, it should be taken for granted that the legislature has said what it meant and meant what it said. But where there is

ambiguity in the language of the statute, or its true meaning is not clear, recourse can be had to the rules of interpretation. The following observation made by the Supreme Court on this aspect in *Mangalore Chemicals & Fertilizers Limited vs. Deputy Commissioner of Commercial Taxes*⁵ is relevant-

“Indeed, the need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of statute. If the words are plain and clear and directly convey the meaning, there is no need for any interpretation”.

12. The exemption notification describes the exempted goods as alkyl esters, commonly known as bio-diesels of Chapters 29 and 38. Whereas chapter 29 includes pure bio-diesel, chapter 38 takes within its fold the mixture of bio-diesel and petro-diesel used in motor engines. As already seen, the use of pure bio-diesel for running motor engines is at present not commercially viable, and so, bio-diesel mixtures are being used for this purpose. The language of the notification is very clear and conveys the intention of exempting both pure bio-diesel and mixtures of bio-diesel. Had the intention been to grant exemption only to pure bio-diesel, reference to Chapter 38 in the notification would have been unnecessary. Besides, the notification would have described the exempted goods as ‘*pure bio-diesel*’ instead of calling it “*commonly known as bio-diesels*”. The word ‘*commonly*’ is defined in the New Shorter English Oxford Dictionary as ‘*generally, usually, universally etc.*’. So the notification intends to exempt what people commonly refer to as bio-diesel, which is both pure bio-diesel and its mixtures. The notification itself

⁵ 1991(55)ELT 437(SC)

has adopted a common parlance test instead of chemical composition test. So long as one of the main ingredients remains pure bio-diesel, it satisfies the test laid down in S.No.53-A of the notification. In view of the clear words of the notification, there is no need to invoke the rules of interpretation.

13. In the light of the foregoing discussion, we rule as follows-

- (i) the blend of pure bio-diesel and petrol-diesel in the ratio of 60% and 40% would fall under Tariff Heading No. 38 24 90 90 of the Central Excise Tariff Act, 1985.
- (ii) The process of blending would amount to manufacture under the Central Excise Act, 1944.
- (iii) The above blend is fully exempt from excise duty under Notification No. 4/2006-Central Excise dated 1.3.2006, as amended by Notification No. 4/2007-Central Excise dated 1.3.2007.

Pronounced in the open court of Authority on 11th day of December, 2008.

Sd/-
(A. SINHA)
MEMBER

Sd/-
(P.V. REDDI)
CHAIRMAN

Sd/-
(CHITRA SAHA)
MEMBER