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Commissioner of Central Excise Vs. Sky Oxygen Co. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-09-2005

Reported in : (2005)(189)ELT237Tri(Mum.)bai

Judge : A Wadhwa, A M Moheb

Appellant : Commissioner of Central Excise

Respondent : Sky Oxygen Co. Ltd.

Judgement :

1. The Commissioner (Appeals), vide his impugned order has allowed the appeal on the ground that the appellants are receiving oxygen gas through pipeline and filling the said oxygen gas into cylinders. The activity undertaken by the appellants does not amount to manufacture within the meaning of Section 2(f) of Central Excise Act, 1944 with effect from 23-7-96, as oxygen gas remains oxygen gas without change in chemical composition.

2. The Revenue in their memo of appeal has contended that inasmuch as oxygen gas has been re-packed in the unit container and sold in the market under the name as 'oxygen gas' in cylinders, the same is commercially known as different product from oxygen in liquid form and the process undertaken is essentially to make the gas marketable and as such, duty should be charged on the same.

3. After hearing both sides, we do not find any justifiable reason to interfere with the order of the Commissioner (Appeals). We have been informed by the ld.

Advocate appearing for the respondents that the oxygen gas, which travels to the respondent's premises through pipeline for the purpose of packing has already discharged the duty burden on the same. Mere filling of oxygen gas in the cylinders cannot be said to be resulting in a different excisable commodity so as to levy duty of excise on the same for the second time. As such, we do not find any merit in the Revenue's appeal and reject the same.

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