

F.NO. 96/43/2015-CX.1
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

New Delhi, dated the 11th April, 2016

To
All Principal Chief Commissioner / Chief Commissioners of Customs, Central Excise & Service Tax;
All Director Generals of Customs, Central Excise & Service Tax;
All Principal Commissioners/ Commissioners of Customs, Central Excise & Service Tax;
Webmaster, CBEC

Subject:- Clarification regarding re-refined used or waste-oil – reg

Madam/Sir,

References have been received regarding excisability of re-refined used oil or waste oil. Various units are engaged in re-refining of waste oil or used lubricating oil collected from the transformers, service stations of vehicles etc. The matter has been examined.

Process

2. Used Oil contains impurities and contaminants such as moisture, diluents, sediments, metal particles and carbon. In refining units, waste or used oil undergoes various process such as dehydration-for removal of moisture, distillation-for removal of diluents, clay polishing- for removal of carbon by adsorption process, filtration-for removal of the clay and the dissolved carbon to render it usable. The oil so obtained from such waste or used oil is packed and sold as base oil, lubricating oil and transformer oil etc. to the consumers for further use.

Classification

2.1 “Waste oil” has been defined in note 3 of chapter 27 of First Schedule of Central Excise tariff Act, 1985 as waste containing mainly petroleum oils and oils obtained from bituminous minerals, whether or not mixed with water. These include:

- (a) such oils no longer fit for use as primary products (for example, used lubricating oils used hydraulic oils and used transformer oil);
- (b) sludge oils from the storage tanks of petroleum oils, mainly containing such oils high concentration of additives (for example, chemicals) used in the manufacture of primary products; and

(c) such oil in the form of emulsions in water or mixtures with water, such as those resulting from oil spills, storage tank washing, or from the use of cutting oils for machining operations.

2.2. Under Central Excise tariff heading 2710, there are three headings or sub-classifications at the single dash (-) level. The first of the three heading at single dash (-) level deals with petroleum oils and oils obtained from bituminous minerals.....etc. other than those containing bio-diesel and other than waste oil. Second heading at this level deals with those containing biodiesel other than waste oil and the third heading is meant for waste oil. Waste oil is further divided into two sub-classifications at eight digit level, with two dash (--), namely 27109100 and 27109900. Waste oil is classifiable in either of them depending upon its composition. Lubricating oil on the other hand is classifiable under CETH 27101980, a heading specifically covering lubricating oil.

3. It may be noted that used lubricating oil collected from service stations is not fit for use as primary products and will therefore be classified as waste oil whereas processed waste oil, which becomes fit for use as lubricating oil and would qualify as primary product, will be classified as lubricating oil.

Manufacture

4. Waste oil after processing may become lubricating oil but this process would not amount to manufacture in view of the judgement of tribunal in case of Collector vs Mineral Oil Corporation [1999(114) ELT 166] upheld by Hon'ble Supreme Court [2002(140) ELT 248(SC)]. However, the issue also needs to be examined in light of chapter note 4 of chapter 27 which was inserted in the Central Excise Tariff by the Finance Act of 2000.

5.1 Chapter note 4 of chapter 27 is a deeming fiction on manufacture and provides that:-

“In relation to the lubricating oils and lubricating preparations of heading 2710, labelling or re-labelling of containers and re-packing from bulk pack to retail packs or the adoption of any other treatment to render the product marketable to the consumers, shall amount to manufacture”

5.2 This chapter note applies only to “lubricating oils and lubricating preparations of heading 2710”. Other goods falling under CETH 2710 are not covered by the chapter note. The deeming fiction provides that when one of the process listed in the chapter note is carried out on lubricating oil or lubricating preparations, it shall be deemed to be manufacture. These processes are-

- (i) labelling or re-labelling of containers,
- (ii) re-packing from bulk pack to retail packs,
- (iii) adoption of any other treatment to render the product marketable to the consumers.

5.3 Thus for a re-refining unit, the test for levy of Central Excise duty is whether the lubricating oil (produced from the waste oil) has undergone any of the process listed in chapter note 4 of chapter 27 as explained above (paragraph 5.2). Where such

process has been carried out, it would amount to manufacture and Central Excise duty would be leviable.

Application

6. A unit processing waste oil or used oil would need be examined in above light to decide whether the process undertaken by them amounts to manufacture. Where the process amounts to manufacture, Central Excise duty is payable. The issue is interpretational in nature and therefore where a demand is raised pursuant to this circular, it should be raised for normal period of limitations only. SSI benefit, where admissible, should be extended.

7. Field formations and trade may be informed suitably. Difficulty experienced, if any, in implementing the circular should be brought to the notice of the Board. Hindi version would follow.

(Santosh Kumar Mishra)
Under Secretary to the Government of India