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|  | <p>OFFICE OF THE COMMISSIONER</p> <p>CUSTOM HOUSE, KANDLA</p> <p>NEAR BALAJI TEMPLE, NEW KANDLA</p> <p>Phone : 02836-271468/469 Fax: 02836-271467</p> |
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| DIN- 20240471ML0000777EA9 | | |
| A | File No. | GEN/ADJ/COMM/151/2020-Adjn-O/o Commr-Cus-Kandla |
| B | Order-in-Original No. | KND-CUSTM-000-COM-01-2024-25 |
| C | Passed by | M. Rammohan Rao, Commissioner of Customs, Custom House, Kandla. |
| D | Date of Order | 08.04.2024 |
| E | Date of Issue | 08.04.2024 |
| F | SCN No. & Date | F.No. DRI/AZU/GRU-26/Panoli(Int-26)2015/2019 dated 22.01.2020 and Supplimentary SCN dated 07.02.2020 issued by Additional Director General, Ahmedabad Zonal Unit, Ahmedabad |
| G | Noticee / Party / Importer / Exporter | M/s Panoli Intermediates (India) Pvt. Ltd., New Delhi and Others. |

1. This Order - in - Original is granted to the concerned free of charge.
2. Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench,

2nd Floor, Bahumali Bhavan Asarwa,

Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad - 380004
3. Appeal shall be filed within three months from the date of communication of this order.
4. Appeal should be accompanied by a fee of Rs.1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.
5. The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.
6. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules, 1982 should be adhered to in all respects.
8. An appeal against this order shall lie before the Appellate Authority on payment of 7.5% of the duty demanded wise duty or duty and penalty are in disupte, or penalty wise penalty alone is in dispute.

BRIEF FACTS OF THE CASE:

M/s. Panoli Intermediates (India) Pvt. Ltd., 105, Mohata Building, 4, Bhikaji Cama Place, New Delhi-110066 having corporate office at 'Sara Niwas', 20-21, Harinagar Co-Operative Society, Gotri Road, Vadodara -390007 (hereinafter also referred to as 'M/s. PIPL')(IEC No.599048522), were engaged in import of various goods under declared trade names of 'Waksol' series, such as, Waksol-A, Waksol 9-11A, Waksol 9-11B, Waksol-B, Waksol 9-11, Waksol C9-11A, Waksol C9-11B etc. They were classifying all these products under CTH 27101990 of Customs Tariff Act, 1975.

2. Intelligence was gathered by the officers of Directorate of Revenue Intelligence (hereinafter referred to as 'DRI') suggested that M/s. PIPL were indulged in evasion of Customs Duty by mis-classifying of the said import goods. They were classifying the products Waksol-A, Waksol 9-11A, Waksol 9-11B, Waksol 9-11, Waksol C9-11A, etc., under CTH 27101990, instead of CTH 34052000, for the imports made through Kandla Port and Hazira Port and were thereby paying lesser amount of Customs duty at the time of clearance under the Ex-Bond Bills of Entry. Thus, M/s. PIPL, had evaded payment of appropriate duty, viz., BCD, CVD/IGST, Ed. Cess and Sec. & Higher Ed. Cesses on CVD/IGST, Ed. Cess and S. & Higher Ed. Cess on Customs, SAD etc. (hereinafter referred to as "Customs Duty").

3. The representative samples of the imported goods were drawn under Panchnama dated 07.08.2015 from Tank No. IMC 113 and IMC 205 of M/s. IMC Limited, Kandla, where the imported goods were stored. During the Panchnama proceedings, Shri Devendra Dadhich, Terminal Manager, M/s. IMC Limited, Kandla informed that the import cargo of M/s. PIPL was stored in two tanks, i.e., Tank No. IMC 113 and IMC 205. As per the stock position, the Tank No. IMC 205 was containing 709.556 MT of Waksol 9-11A imported per vessel MT 'Chemroute Oasis' vide Warehouse Bill of Entry No.9658760 dated 22.06.2015 and the Tank No. IMC 113 was containing 628.134 MT of comingled cargo of N. Paraffin (616.037 MT) and Waksol C9-11 (12.097 MT) imported vide Warehouse Bills of Entry Nos.8917819 dated 15.04.2015, 9356251 dated 26.05.2015 and 8979467 dated 20.04.2015. The samples were forwarded to Custom House Laboratory, Kandla for testing vide Test Memo No.57/2015-16 dated 13.08.2015 for goods stored in Tank No.205 and Test Memo No.58/2015-16 dated 13.08.2015 for goods stored in Tank No.113.

4. The Chemical Examiner Grade-I, Custom House Laboratory, Kandla, vide two test reports both dated 31.08.2015, reported as under:

(i) For the test report No. DRI/09 dated 13.08.2015 for the sample pertaining to import goods (Waksol 9-11A) stored in Tank No. 205 - the facility for oil determination in petroleum wax was not analyzed in their lab and the same was available at CRCL, Pusa, New Delhi.

(ii) For the test report No.DRI/10 dated 13.08.2015 for the sample pertaining to import goods (comingled goods) stored in Tank No.113 - for the point "*whether the product contain by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals*", - "Petroleum oil more than 70%"

Accordingly, the other representative samples of the goods stored in Tank No.205 and 113 were sent to CRCL, New Delhi for testing vide Test Memo No.59/2015-16 dated 03.09.2015 and 60/2015-16 dated 03.09.2015 respectively. The following queries/parameters were asked for obtaining test results:-

- (i) Melting Point (cooling curve) °C
- (ii) Ash %, max
- (iii) Pour Point
- (iv) Viscosity
- (v) Density@20 C
- (vi) Flash [Point@101.3kpa\(oc\)](#)
- (vii) Water solubility@20C
- (viii) Wax content, %mass
- (ix) Whether wax has been dispersed in liquid or otherwise
- (x) Acidity
 - a) Organic (mg KOH/g), max
 - b) Inorganic(mg KOH/g), max
- (xi) Saponification value, max.
- (xii) Oil content % mass
- (xiii) Congealing point
- (xiv) Whether product is mixture of n-Alkane (C9-C11) and paraffin wax or otherwise, specify the % separately
- (xv) Whether subject product can be dispersed in liquid or otherwise
- (xvi) Whether product is chemically modified or artificial wax or otherwise?
- (xvii) Whether the product is petroleum oils/oils obtained from bituminous mineral
- (xviii) Whether the product contain by weight 70% or more of petroleum oils or of oils obtained from bituminous mineral
- (xix) Whether these oils are basis constituents of the preparations, containing bio diesel, other than waste oil
- (xx) Chemical Composition & properties of the product (in percentage)Usage

(xxi) Any other remarks/ suggestion regarding product's nature/composition etc.

5. The Chemical Examiner Grade-II, CRCL, New Delhi, vide Test Reports C.No. 35-CRCL/2015/CL-40/DRI/14.9.15 dated 13.10.2015 with respect to the representative samples for the imported goods stored in Tank No.205 reported the test results as under:-

"The sample is in the form of clear colourless oily liquid. It has the characteristics of wax and having mineral hydrocarbon oil content (% by mass)= 15.0.

Aromatic content=9.7% by wt.

Ash Content=NIL

Pour point =16 deg. C

Flash point (RMCC)= 55 deg. C

Actual use may be ascertained.

To answer other queries raised in the test-memo, the sample under reference may be forwarded to Indian Institute of Petroleum, Dehradun, if required.

Sealed remnant sample returned."

5.1. As regards the Test Memo No. 60/2015-16 dated 03.09.2015 which was meant for representative sample pertaining to import goods stored in Tank No.113 in which comingled cargo of N-Paraffin and Waksol C9-11 was stored, the Chemical Examiner Grade-II, CRCL, New Delhi, vide Test Report C.No. 35-CRCL/2015/CL-418 DRI/14.10.15 dated 17.11.2015 reported that the sample under reference was composed of mineral hydrocarbon oil more than 70% by weight.

6. The two Test Reports dated 31.08.2015 of Custom House Laboratory, Kandla and Test Report dated 13.10.2015 of CRCL, New Delhi had given opinion in respect of some of the queries raised vide respective Test Memos. However, all the queries were not replied by the said Laboratory, and hence, in order to get the test results of remaining queries/parameters, the Joint Director, Custom House Laboratory, Kandla was requested telephonically in this regard. On request by DRI, the Joint Director, Custom House Laboratory, Kandla informed that the testing of samples of Waksol 9-11A could be conducted in outside laboratory by the officers of Custom House Laboratory, Kandla. Accordingly, the representative sample of goods declared as Waksol 9-11A drawn from the Tank No. 205, copy of Test Memo No. 59/2015-16, Test

Report of Custom House Laboratory bearing No. DRI 09 dated 31.08.2015, Test Report of CRCL, New Delhi bearing C. No. 35-CRCL/2015/CL-40/DRI/14.9.15 dated 13.10.2015, a fresh Test Memo bearing No. 89/2015-16 dated 03.02.2016 and relevant literature of imported goods, were forwarded to Custom House Laboratory, Kandla vide letter dated 03.02.2016 for getting the test report.

7. Meanwhile, in order to ascertain the correct classification of the imported goods, viz.,Waksol 9-11A etc., further representative samples of Waksol 9-11A imported by M/s. PIPL were drawn from the storage Tank No. 101 and 205 under Panchnama dated 19.02.2016 drawn at Liquid Tank Farm, M/s. IMC Ltd., Kandlaas the subject goods were available in these two tanks at the time of Panchnama dated 19.02.2016.

8. The samples so drawn were forwarded to Custom House Laboratory, Kandla, vide letter dated 22.02.2016 along with Test Memo No. 93/2015-16 dated 22.02.2016 and 94/2015-16 dated 22.02.2016, respectively for testing with following queries/parameters:-

Table-1

| S. No | Testing Parameters | Comments to be offered by Chemical Examiner |
|-------|---|---|
| 1 | Description of goods | |
| 2 | Whether it has characteristics of wax | |
| 3 | Wax content | |
| 4 | Oil content | |
| 5 | Whether dropping point? drop melting point is more than 40°c | |
| 6 | Whether viscosity is not exceeding 10 Pa.s(or 10000 cP) when measured by rotational viscometer , at a temperature of 10 degree C above the dropping point | |
| 7 | Whether product containing mineral substance or other materials other than wax | |
| 8 | Whether it prepared waxes /wax preparation or otherwise | |
| 9 | Whether it can be drawn into threads, above its melting point | |
| 10 | Any other remarks/ suggestion regarding product's nature/composition etc. | |

9. The Joint Director, Custom House Laboratory, Kandla, vide their reports, opined as under:-

Table-2

| S.No. | Tank No. | Test Memo No. & Date | Report No. & Date of CHL, Kandla | Test Results/Report |
|-------|----------|----------------------------------|----------------------------------|---|
| 1 | 205 | 89/2015-16 dtd. 03.02.2016 | DRI-37 dtd. 02.11.2016 | The sample is in the form of colourless oily liquid, composed of paraffinic compound. Test conduct with solvent/solvent mixture as per ASTM D-721-02 and ASTM D-3235-02 does not show any oil separation. Hence, the sample may be considered as wax preparation. |
| 2 | 101 | 93/2015-16 dtd. 22.02.2016 | DRI-45 dtd. 02.11.2016 | The sample is in the form of colourless oily liquid, composed of paraffinic compound. Test conduct with solvent/solvent mixture as per ASTM D-721-02 and ASTM D-3235-02 does not show any oil separation. Hence, the sample may be considered as wax preparation. |
| 3 | 205 | 94/2015-16 dtd. 22.02.2016 | DRI-46 dtd. 02.11.2016 | The sample is in the form of colourless oily liquid, composed of paraffinic compound. Test conduct with solvent/solvent mixture as per ASTM D-721-02 and ASTM D-3235-02 does not show any oil separation. Hence, the sample may be considered as wax preparation. |

10. It appeared that the test results of the representative samples of goods imported by M/s. PIPL, i.e. 'Waksol 9-11' were not specifying the CTH under which the subject goods could be classified. Therefore, the Joint Director, Custom House Laboratory, Kandla was requested to offer his technical opinion regarding the classification of goods "Waksol 9-11A" under appropriate Customs Tariff. The Joint Director, Custom House Laboratory, Kandla vide report dated 09.04.2019 opined that the manufacturer's literature and certificate of analysis issued by M/s. Intertek for the product under reference, i.e., Waksol 9-11 stated that the percentage content of component with Carbon 8, i.e., Paraffin oil content was 0.7% and 0.6% respectively. Also, the oil content obtained by analysis carried out by ASTM D 721 and ASTM D 3235 methods confirmed that the Petroleum oil was less than 70%, the product under reference, i.e., Waksol 9-11A did not fall under Ch. 2710. The Joint Director, Custom House Laboratory, Kandla further specified in his report that the manufacturer's literature stated that Waksol-A and C₉-C₁₁ Paraffins were

blended in proprietary ratio to produce Waksol 9-11. Also, the general note to HSN for Ch. 34 states that the product obtained by the industrial treatment of Fats, oils or waxes were covered under Ch. 34.05; that based on the above facts, they (Custom House Laboratory, Kandla) opined that the product 'Waksol 9-11A' was a preparation/ blend of Waksol A (Hydrocarbons C₁₄-C₂₈) and C9-C11paraffins.

11. The Joint Director, Custom House Laboratory, Kandla was further asked by DRI vide letter dated 30.04.2019, to give expert technical opinion under which CTH, the subject goods 'Waksol 9-11A' was covered. It was also asked to supply detailed reason in support of his opinion. In response, the Joint Director, Custom House, Laboratory, Kandla opined as under:-

"2. The product u/r, "WAKSOL 9-11 A" does not fall under chapter 2710, i.e. from 27012 to 27109900, of "Petroleum oils and oils obtained from Bituminous Minerals, other than crude; preparations not elsewhere specified or included, containing By weight 70% or more of Petroleum oils or of oils obtained from Bituminous minerals, These oils being the basic constituents of the preparation; Waste oils", as the sample containing oils less than 70.0%.

3. The Product u/r "WAKSOL 9-11 A" also does not fall under the chapter 2712 "Petroleum jelly, paraffin wax, microcrystalline Wax, Ozokerite, Lignite Wax, Peat Wax, other mineral waxes, and similar products obtained by synthesis or by other processes, whether or not colored" since the sample having congealing point less than 30°C,

(a) The congealing point of the products Petroleum jelly, Petroleum Wax, Microcrystalline petroleum Wax, slack Wax and other waxes falling under chapter 271210 to 27129090 should be more than 30°C (ASTM D 938)

(b) Since the congealing point is one of the critical Parameter, as it is not compiles to standard value, other parameters like density at 70°C, work cone penetration index at 25°C (ASTM D 217), cone penetration at 25°C (ASTM D 937) the set of parameter mentioned in HSN Note for 27.12, are no need to carry our further.

4. As this sample is not any of the waxes falling under Chapter 271210 to 27129090 or not of Petroleum oils and oils obtained from Bituminous Minerals, preparation containing 70% or more than of

Petroleum oils from 271012 to 27109900 and it is blend/mixture of WAKSOL A, a synthetic Paraffin wax and Paraffin having Carbon number C9-C12. The Paraffin C9-C11 is a ingredient used as carrier to improve consistency of polishes in which the WAKSOL A is a principal component used to impart water proof, wear resistant and other properties of polishes and thus the blend of paraffin C9-C11 and WAKSOL A to get the preparation "WAKSOL 9-11 A" is correctly falls under the chapter 3405.20 as reported earlier."

12. International Maritime Organization (IMO) is a specialized agency of the United Nations with responsibility for the safety and security of shipping and the prevention of marine pollution by ships. The categorization of chemicals by IMO is with the purpose to ensure the safe carriage and prevention of marine pollution when such chemicals are carried on merchant ships. The Mercantile Marine Department (MMD) was representing India in IMO and formulation details of product Waksol 9-11A and Waksol 9-11B manufactured by M/s. Sasol, South Africa [M/s. Sasol Chemical (Wax), a division of M/s. Sasol (South Africa) Pty. Ltd./ M/s. Sasol Chemicals Industries Pty. Ltd.] were submitted by South Africa to IMO). In order to ascertain the correct classification of import goods Waksol 9-11A etc., inquiries were initiated with MMD, Kandla vide letter dated 08.09.2015 and it was requested to provide formulation details of Waksol 9-11A and Waksol 9-11B after obtaining from IMO. On being requested by DRI, the Principal Officer, MMD, Kandla asked the Directorate General of Shipping, Mumbai vide letter dated 15.09.2015, to provide the requisite documents/details of subject goods submitted by South Africa with IMO. The requisite documents were provided vide letter dated 16.12.2015, of Executive Officer (Nautical), Directorate General of Shipping, Mumbai.

13. It was informed by Directorate General of Shipping, Mumbai vide letter dated 16.12.2015 of Shri B.V. Chitimilia, Executive Officer (Nautical), that the products Waksol 9-11A and 9-11B referred in DRI's letter were products that were categorized in List 3 of Annexure-3 of MEPC.2/Circ.20 dated 17.12.2014 of the IMO. The List 3 included Trade named mixtures containing at least 99% by weight of components already assessed by IMO, presenting safety hazards and as per the Tripartite Agreements with respect to List 3 and PPR Product Data Reporting Form, Waksol 9-11A and Waksol 9-11B contained n-alkanes (C9-C11) and Paraffin Wax. The further identification and specifications of said products were detailed as under:-

- (i) Main Trade Name- Waksol 9-11A & Waksol 9-11B
- (ii) Main Chemical name- Not applicable, product is blend/mixture

- (iii) Chemical formula- Not applicable, product is blend/mixture
- (iv) C.A.S. Number- Not applicable, product is blend/mixture
- (v) EHS Number- Not applicable, product is blend/mixture
- (vi) BMR Number- Not applicable, product is blend/mixture
- (vii) RTECS Number- Not applicable, product is blend/mixture

13.1. The Physical properties of said products were detailed in thePPR Product Data Reporting Form received from Directorate General of Shipping, Mumbai, as given below:-

WAKSOL 9-11A:-

Table-3

| Property | Units | Qual. | Lower Value | Upper Value | References/Comments |
|--------------------------|---------|--------|-------------|-------------|---|
| Molecular Weight | Daltons | ~ | 112 | 532 | Manufacture Data |
| Density @ 20°C | (kg/m3) | =0.765 | 0.76 | 0.78 | MSDS |
| Flashpoint (CC) | (°C) | ~ | 48 | 56 | MSDS |
| Boiling Point @ 101.3kPa | (°C) | ~ | ≥ 130 | ≤ 340 | Measured |
| Melting Point/Pour Point | (°C) | ~ | 23 | 49 | Manufacture Data |
| Water Solubility @ 20°C | (mg/l) | | | | Insoluble |
| Viscosity @ 20°C | (mPa.s) | ~ | 2.21 | 2.74 | Manufacture Data |
| Vap. Press. @ 20°C | (Pa) | = | ≥ 2.3 | | Manufacture Data |
| Autoignition Temp | (°C) | = | ≥ 232 | | MSDS |
| Explosion Limits | (%v/v) | ~ | ≥ 0.6 | ≤ 7 | Manufacture Data |
| Carriage Temperature | (°C) | | 40 | | |
| Unloading Temperature | (°C) | | 40 | | |
| MESG | (mm) | Min | 2.01 | | Calculated based on components in the mixture |

WAKSOL 9-11B:-

Table-4

| Property | Units | Qual. | Lower Value | Upper Value | References/Comments |
|------------------|---------|--------|-------------|-------------|---------------------|
| Molecular Weight | Daltons | ~ | 112 | 910 | Manufacture Data |
| Density @ 20°C | (kg/m | =0.765 | 0.76 | 0.78 | MSDS |

| | | | | | |
|--|---------|-----------------------------------|-------|-------|---|
| | 3) | | | | |
| Flashpoint (CC) | (°C) | ~ | 48 | 56 | MSDS |
| Boiling Point @ 101.3kPa | (°C) | ~ | ≥ 130 | ≤ 340 | Measured |
| Melting Point/Pour Point | (°C) | ~ | 23 | 49 | Manufacture Data |
| Water Solubility @ 20° C | (mg/l) | | | | Insoluble |
| Viscosity @ 20°C | (mPa.s) | Highly viscous with wax particles | | | Manufacture Data |
| Temp at which viscosity is 50 mPa.s | (°C) | = | 25 | | |
| Vap. Press . @ 20°C | (Pa) | = | ≥ 2.3 | | Manufacture Data |
| Autoignition Temp | (°C) | = | ≥ 232 | | MSDS |
| Explosion Limits | (%v/v) | ~ | ≥ 0.6 | ≤ 7 | Manufacture Data |
| Carriage Temperature | (°C) | | 40 | | |
| Unloading Temperature | (°C) | | 40 | | |
| MESG | (mm) | Min | 2.01 | | Calculated based on components in the mixture |

14. From the above-mentioned identifications and properties submitted by manufacturer supplier M/s. Sasol, South Africa with IMO also, it appeared that the imported goods, i.e., Waksol 9-11A and Waksol 9-11B were blend/mixture and contained n-alkanes (C9-C11) and Paraffin Wax. Inquiries were also carried out with manufacturer supplier of products Waksol 9-11A and Waksol 9-11B, viz., M/s. Sasol, South Africa through their marketing agent M/s. Apratim International Pvt. Ltd., New Delhi, with respect to main components of said products, their manufacturing process, end use, etc. M/s Apratim International Pvt. Ltd. provided the Certificate of Analysis, Product Data Sheet, Material Safety Data Sheet of product Waksol 9-11A and printout of email received from M/s. Sasol, South Africa in which the manufacturing process of product Waksol 9-11A was narrated as under:-

“Natural Gas is reformed into synthesis gas (syngas) which is in turn fed to Fischer Tropsch (FT) synthesis reactors. The manufacturing plant runs a low-temperature FT process using an Iron catalyst which converts the syngas into hydrocarbons and water. A primary separation process separates the synthesis products into

(1) water

(2) condensates (mainly hydrocarbons C3-C20)

(3) reactor wax (mainly hydrocarbons > C20)

(4) tail gas (syngas and C1-C3 hydrocarbons)

Streams (1) and (4) are of no relevance to Waksol 9-11 production and are not discussed further.

The condensates are distilled to remove any wax and then hydrogenated to remove unsaturation and small amount of oxygenates present in the condensate. This stream is then distilled further to produce a number of paraffinic products which includes C9-C11, C10-13 and C14-20 n-paraffin.

The reactor wax is distilled into a number of fractions, the lightest being Waksol A which mainly consists of (Oxidized Paraffins) hydrocarbons in the C16-C22 range. As its melting point is typically 26-28 deg. C.

Waksol A and C9-C11 n-paraffin are blended in a proprietary ratio to produce Waksol 9-11A which is a liquid at room temperature (20 deg. C)."

15. As per the product data sheet, the Oil Content (% by mass) in Waksol A and Waksol B, which are main component to be blended with C9-C11 n-paraffin in a proprietary ratio to produce Waksol 9-11A and Waksol 9-11B, are 14% and 9% only and the overall percentage of oil content in the sample of Waksol 9-11A tested at CRCL, New Delhi comes to 15% by mass, which is lesser than the basic requirement of classification of a product under Ch. 27 of Customs Tariff Act, 1975, i.e., 70% by weight as also confirmed in the Technical Opinion dated 14.05.2019, of Joint Director, Custom House Laboratory, Kandla. Thus, it appeared that the product Waksol A, Waksol 9-11A, Waksol 9-11B, Waksol-B, Waksol 9-11, Waksol C9-11A, etc., are not classifiable under CTH 27101990 as done by M/s. PIPL in the instant case.

16. Statements of various persons were recorded and the relevant abstracts of the same are as follows: -

16.1. Statement of Shri Vishnu P. Naykar, Manager (Import), M/s. PIPL was recorded on 24.08.2015 wherein he *inter alia* stated that the he was working as Manager (Import) in M/s. PIPL since the year 2006 and was looking after import and export related work of the firm. He stated that their company was engaged in import of mainly Waksol A, Waksol B and Waksol C9-C11 and N-Paraffin, Toluene, Alfa Olefins C20-C24, etc.; that their company did not manufacture any product from the import of Waksol A, Waksol B, Waksol C9-C11, N-Paraffin and Alfa Olefins C20-C24, as these import products

were sold on HSS basis/ Bond to Bond Transfer and retail basis. Only Para Nitro Toluene was being manufactured from import of Toluene; that Waksol A, Waksol B and C9 -C11 all were Paraffin having various carbon chain, density and other parameters; that as compared to N-Paraffin, Waksol C9-C11 was cheaper by approximately 150 to 200 USD and Waksol B was cheaper by approximately 250 to 300 USD than N Paraffin; that the Waksol A, Waksol B, Waksol C9-C11 were derived/ extracted from Coal and N-Paraffin was petroleum based products. The end use of Waksol A, Waksol B and C9-C11 were for manufacturing of chlorinated paraffin which was used in PVC industries, shoe industries, polymer industries and wire and PVC pipe industries and marine paint industries etc; that they did not make any consignment wise agreement/ contract with supplier manufacturer M/s. Sasol Chemical (Wax) as they were buying these products from them since last 15 years and the orders were placed on proforma invoice on monthly basis; that they did not have in-house facility to check quality of import product in M/s. Panoli Intermediates (India) Pvt. Ltd but they were checking quality and parameters from inhouse laboratory of their group company M/s. Kutch Chemical Industries Ltd. that he was not aware what parameters are tested in their in house laboratory.

Shri Vishnu P. Naykar further stated that there was no wax in Waksol A and Waksol C9-C11 whereas Waksol B was semi waxy product. On being asked whether any license/ approval/permission was obtained from Deptt. of Chemical & Petroleum Chemical, he informed that they did not obtain any license/approval/permission from Deptt. Of Chemical & Petroleum Chemical as the import product was OGL products.

16.2. Statement of Shri Devendra Dadhich, Terminal Manager in M/s. IMC Ltd. was recorded on 03.02.2016 wherein he, *inter alia*, stated that he was looking after terminal operations in M/s. IMC Ltd.; that M/s. PIPL and M/s. Kutch Chemicals Pvt. Ltd. used to store their imported goods at their liquid terminal. The said liquid terminal was appointed as "public warehouse" under Section 57 of the Customs Act, 1962, during September/ October of 2015. He further deposed that M/s. PIPL and M/s. Kutch Chemicals Pvt. Ltd. used to import and warehouse Waksol 9-11-A, Waksol 9-11-B, Normal Paraffin, Heavy Normal Paraffin, etc.; that for warehousing their imported material they used to intimate them (M/s. IMC Ltd.) through e-mail about arrival of vessel, quantity, description of the product and the storage tank in which they intended to store the imported material. After that their appointed Customs Broker used to submit them Customs Discharge Permission of the cargo; that two storage tanks, bearing numbers 113 and 205 of said terminal

were hired by the said companies since last around three-four years; that only their imported goods are being stored in these two tanks. He further deposed that sometimes these two importers used to comingle their imported consignments. Sometimes imported materials having different declared description were also comingled in the above mentioned two storage tanks by the said two importers.

Shri Devendra Dadhich further deposed that the goods were delivered to the importers from their liquid terminal on the basis of out of charge home consumption Bill of Entry, submitted by the importer/ Customs Broker; that if two or more goods were lying comingled in storage tank, delivery from the said comingled material was given by mentioning its description on gate pass as per produced Bill of Entry. On being asked, he stated that they did not have any facility for separation of the comingled cargo; that they used to deliver the cleared quantity from the comingled cargo and to mention description on the gate passes as per out of charged Bill of Entry. The imported consignments were comingled by the importers and clearance was obtained by them through their appointed Customs Broker, hence they were well aware of the same.

16.3. Statement of Shri Krishan Kumar, Director in M/s. Apratim International Pvt. Ltd., New Delhi was recorded on 19.01.2016 and further submission of documents vide letters dated 29.01.2016 and 04.02.2016 wherein he, *inter alia*, stated that M/s. Apratim International Pvt. Ltd. was consultant cum Marketing Agent of M/s. Sasol, South Africa, in India and his company facilitates exports of Paraffins of M/s. Sasol to India; that sometimes the importer directly contacts M/s Sasol for purchasing any type of *n-paraffins* for use in CPW Industry i.e. Chlorinated Paraffin Wax Industry.

He further informed the names of the products of M/s. Sasol, export of which, was facilitated by them into India as C9-C11 (brand name KOGASOL), C14-C20, C10-13, WAKSOL A, WAKSOL B, WAKSOL 9-11 A and WAKSOL 9-11 B. He also provided copy of their agreement with SASOL, South Africa and letter dated 15.01.2015 of SASOL explaining manufacturing process of products viz WAKSOL A, WAKSOL 9 -11 A etc. Shri Krishan Kumar also explained the composition, manufacturing, Characteristics and applications of the products of M/s. Sasol including WAKSOL 9-11 A and WAKSOL 9-11 B etc. stating that all these products were supplied to Chlorination Industry for manufacturing CPW (Chlorinated Paraffin waxes); that WAKSOL A was mainly composed of C18-C26 Paraffins and C9-C11 was n-paraffin solvent having carbon chain of 9 to 11 carbon atoms; that M/s. Sasol used Gas to Liquid technology by Fischer Tropsch process to manufacture Waksol-A and C9-C11. He also informed that the product Waksol 9-11A is obtained by blending WAKSOL A

and C9-C11 in the ratio (having WAKSOL A 70 % to 80% and C9-C11 20 % to 30%).

Shri Krishan Kumar further produced the printout of email received by him from M/s. Sasol explaining the manufacturing process of Waksol 9-11 A as mentioned hereunder:-

"Waksol 9-11 is a product produced by Sasol (South Africa) Pty Ltd at Sasolburg plant in South Africa. It is produced as described below:-

Natural Gas is reformed into synthesis gas (syngas) which is in turn fed to Fischer Tropsch (FT) synthesis reactors. The Sasolburg plant runs a Low-Temperature FT process using an Iron catalyst which converts the syngas into hydrocarbons (and water). A primary separation process separates the synthesis products into

- 1) water,*
- 2) condensates (mainly hydrocarbons C3-C20),*
- 3) reactor wax (mainly hydrocarbons >C20),*
- 4) tail gas (syngas and C1-C3 hydrocarbons).*

Streams 1) and 4) are of no relevance to Waksol 9-11 production and are not discussed further.

The condensates are distilled to remove any wax and then hydrogenated to remove unsaturation and small amounts of oxygenates present in the condensate. This stream is then distilled further to produce a number of paraffinic products which includes C9-C11, C10-13 and C14-20 n-paraffin. The reactor wax is distilled into a number of fractions, the lightest being Waksol A which mainly consists of (Oxidised Paraffins) hydrocarbons in the C16-C22 range. As its melting point is typically 26-28°C. Waksol A and C9-C11 n-paraffin are blended in a proprietary ratio to produce Waksol 9-11A which is a liquid at room temperature (20°C)".

On being asked whether WAKSOL A is a paraffin wax, Shri Krishan Kumar deposed that as per CAS No. 8002-74-2, WAKSOL-A is a Paraffin wax. Shri Krishan Kumar produced a letter dated 15.01.2016 of M/s Sasol to DRI but did not disclose the manufacturing process received from M/s. Sasol through mail, to DRI. On being asked the reason for same, he stated that he was instructed by Mr. Giuseppe Piazza, Marketing Manager of M/s. Sasol to produce to DRI the letter dated 15.01.2016 only. This was revised manufacturing process provided by M/s. Sasol on request made by Mr. K. C. Goyal, Director of M/s. PIPL; that earlier on his request, M/s. Sasol mailed to him the manufacturing process of WAKSOL A and WAKSOL 9-11 A etc and

they forwarded this manufacturing process of WAKSOL A, WAKSOL 9-11 A etc. to M/s. PIPL. However, on seeing the said process, Shri K. C. Goyal requested to remove the words "reactor wax" from the said manufacturing process; that Shri K. C. Goyal told that earlier duty rate for wax was different. So they did not want the word "reactor wax" in manufacturing process of WAKSOL A, WAKSOL 9-11 A etc. Accordingly, on request of M/s. PIPL, M/s. Sasol mailed him the letter describing revised manufacturing process.

16.4. Statement of Mohammad Jamalbhai Aglodia Technical Adviser (process) of M/s. PIPL, was recorded on 30.03.2017 wherein he, *inter alia*, stated they were importing raw materials including Waksol 9-11A for producing chlorinated paraffin wax/Oil (CPW) for use in various industries; that the Waksol 9-11A was mainly composed of C12-C20 (50%), C9-C11(20%) and C21-C30 (30%) \pm 5% paraffin; that to produce Chlorinated Paraffin, Waksol 9-11A was chlorinated under controlled temperature and the Chlorinated Paraffin was used for lower grade compounding (lower quality PVC/Rubber used for pipes, shoes sole etc). As a Chlorinated Paraffin (CP), it could be used in oil paint as elasticiser; that the quality of CP made from Waksol 9-11A was inferior to that of other paraffins (C10-C13, C14-C17, C10-C14).

16.5. Statement of Shri Shivlal P. Goyal, Director of M/s. PIPL, was recorded on 23.02.2016 wherein he, *inter alia*, stated that M/s. PIPL and M/s. Kutch Chemicals Pvt. Ltd. used to import raw materials at Kandla port. The raw materials imported at Kandla were warehoused at liquid terminals of M/s. IMC Ltd. and sometimes at FSWAI; that they used to obtain private bonded warehouse through their appointed Customs Broker; that M/s. PIPL and M/s. Kutch Chemicals Pvt. Ltd. used to import and warehouse various items including Waksol 9-11A, Waksol 9-11B, Normal Paraffin, Heavy Normal Paraffin, etc. For warehousing the imported materials, they used to intimate M/s. IMC Ltd. about arrival of vessel, quantity, description of the product and number of the storage tank. Their Customs Broker used to supply Customs Discharge Permission of the cargo to them and they appoint surveyors. After berthing of the vessel, the cargo was discharged through pipe line to the nominated tanks. Two storage tanks, bearing numbers 113 and 205, of IMC Ltd. Kandla have been hired by them; that the Warehouse Bills of Entry were filed by their appointed Customs Broker M/s. Rishi Kiran Logistics Pvt. Ltd.

Shri Shivlal Goyal further stated that they comingled/ mixed raw materials imported by M/s. Kutch Chemicals Industries Ltd. and M/s. PIPL at liquid terminal of M/s IMC Ltd. at Kandla due to shortage of storage tanks; that the consignments imported by M/s. Kutch Chemicals Industries Ltd. and M/s.

Panoli Intermediates (India) Pvt. Ltd. having different declared description, values etc. were also comingled in the above mentioned two storage tanks. However, all such imported goods were raw materials for Chlorinated Paraffin. During process of manufacturing at their plants they used to comingle such types of raw materials to obtain desired parameter of final product.

As regards the process to obtain delivery of goods cleared from Customs for home consumption from the two or more goods lying comingled in storage tank, Shri Shivlal Goyal stated that though particular goods were cleared against Ex-bond Bills of Entry but since the goods were lying comingled and cannot be separated, they used to obtain delivery from the comingled goods. The descriptions of the goods to be delivered were mentioned on gate passes as per produced Ex-bond Bill of Entry. He further added that when two goods of different descriptions were lying comingled in any storage tank and out of charge of certain quantity of one of such product was given, the quantity of cleared goods cannot be separated from the other comingled goods and the delivery has to be obtained from the comingled cargo. He was aware that the declared description, value etc. of the products imported and comingled by M/s. Kutch Chemicals Industries Ltd. and/ or M/s. PIPL at liquid terminal of M/s. IMC Ltd., were different.

He stated that whenever certain quantity of one of the products was given out of charge and delivery of comingled goods were taken, part quantity of other products lying in comingled cargo, for which customs has not given out of charge, were also delivered. However, all such materials were used for manufacturing of Chlorinated Paraffin and the comingling does not matter for production and Ex-bond Bills of Entry for all the consignments in full were filed one by one by them and no part was left un-cleared in Warehouse Bill of Entry, so duty on full consignments were paid by them.

On being specifically asked whether delivery in part, of the material which has not been given out of charge by customs, with the cleared goods, in comingled state, is against provisions of erstwhile Sections 62(2), Section 68(c) and 71 of the Customs Act, 1962, Shri Shivlal Goyal stated that on various occasions, there existed Customs Cleared Ex-bond Bills of Entry for different goods lying comingled. In that situation, delivery of comingled goods is not in violation of the above provisions. However, on various occasions parts of uncleared goods are also delivered in comingled state since the same cannot be separated, such delivery is technically against above mentioned provisions; that there is no evasion of duty and since last around three/ four months, they have stopped comingling the goods at liquid terminals.

16.6. Statement of Shri K.C.Goyal (Kailash Chand Goyal), Director in M/s. Panoli Intermediates (India) Pvt. Ltd., was recorded on 07.06.2017 wherein he, *inter alia*, stated that they were importing raw materials including Waksol 9-11A for producing chlorinated paraffin wax/Oil (CPW) for use in various industries; that the Waksol 9-11A was mainly composed of C9-C23 (90% to 92%) and above C23-C30 (8% to 10%); that the flash point of Waksol 9-11A was about 50 deg C, density 760 to 780 and aromatic content non traceable, normal paraffin above 60%, Alfa olefin permissible, Iso paraffin's should be less than 50% etc.; that as per M/s. Sasol, Waksol A was obtained from reactor wax and then it was blended with C9-C11 (20% to 30%) to produce Waksol 9-11A; that Waksol A was wax and oil, waxy oil product and as per SASOL documents, Waksol A was paraffin wax. As per GC analysis, Waksol A was composed of n-paraffin's (68.78%), Iso-paraffin's (5.12%), alpha-olefins (14.47%), internal-Olefins (6.65%) and Alcohol (4.97%). He further stated that to produce Chlorinated Paraffin, Waksol 9-11A was chlorinated under controlled temperature and the Chlorinated Paraffin was used for lower grade compounding (lower quality PVC/Rubber used for pipes, shoes sole etc). As a Chlorinated Paraffin (CP), it could be used in oil paint as elasticiser.

Shri K.C. Goyal further clarified that there was major difference in finished product price and quality produced from different grades of Paraffin's (WAKSOL 911A, C14, C14-C17, C20-C24 etc.). If all these products were mixed then the end product (CP) quality would be inferior and would be not as per standard specifications of the customer requirements. However, chlorination would be there but standards of finished product would not maintain; that the raw materials imported by their company PIPL at Kandla were warehoused at liquid terminals of M/s. IMC Ltd. and sometimes at FSWAI, the Kandla based liquid terminal; that two storage tanks, bearing numbers 113 and 205 of IMC Ltd. Kandla were hired by them for storing the import goods since last around four five years; that Warehouse Bills of Entry were filed by their appointed Customs Broker M/s. Rishi Kiran Logistics Pvt. Ltd.; that certain raw materials were comingled at liquid terminal of M/s IMC Limited due to shortage of storage tanks. Different declared description, value etc. were also comingled in the above mentioned two storage tanks; that they used to inform their Customs Broker to get desired quantity of desired warehoused goods and they used to file Ex-bond Bills of Entry and get clearance of desired quantity of desired warehoused goods. Though particular goods were cleared against Ex-bond Bills of Entry but since the goods were lying comingled and could not be separated, they used to obtain delivery from the comingled goods. On various occasions parts of un-cleared goods were also delivered in comingled state

since the same could not be separated, such delivery was technically against provisions of erstwhile Sections 62(2), Section 68(c) and 71 of the Customs Act, 1962.

Shri K.C. Goyal was shown the statement dated 19.01.2016 of Shri Krishan Kumar, Director in M/s. Apratim International Pvt. Ltd., New Delhi wherein he stated that *"I was instructed by Mr. Giuseppe Piazza, marketing manager of SASOL to produce to DRI the letter dated 15.01.2016 only. This was revised manufacturing process provided by SASOL on request made by Mr. K.C. Goyal, Director of M/s. PIPL. Earlier on my request, SASOL mailed to me manufacturing process of WAKSOL A and WAKSOL 9-11 A etc as stated above by me. We forwarded this manufacturing process of WAKSOL, WAKSOL 9-11 A etc. to M/s. Panoli Intermediates India Pvt. Ltd. However, on seeing the said process, Shri K. C. Goyal requested to remove the words "reactor wax" from the said manufacturing process. Shri K. C. Goyal told that earlier duty rate for wax was different. So they did not want the word "reactor wax" in manufacturing process of WAKSOL A, WAKSOL 9-11 A etc. Accordingly on request of M/s. Panoli Intermediates India Pvt. Ltd. SASOL mailed me letter describing revised manufacturing process."*

On being asked to comment on these facts of statement of Shri Krishan Kumar, Shri K.C. Goyal clarified that Shri Krishan Kumar forwarded him the manufacturing process and after going through the manufacturing process he requested Shri Krishan Kumar to remove the word "reactor wax" and "Oxidized paraffin's" from the process because, in his opinion wax was above C30 and he was not aware meaning of "oxidized paraffin's", therefore requested for removal of these word from the process but he had never said that there was any change of duty in wax earlier; that he was not aware regarding detail manufacturing process of production of "REACTOR WAX", production of "WAKSOL A" from reactor wax and production of WAKSOL 911 A from WAKSOL A; that he would request agent of M/s. Sasol to submit the same.

16.7. Statement of Shri Jayesh Natwarlal Mistry, G-Card Holder of Custom Broker company M/s. Rishi Kiran Logistics Pvt. Ltd., was recorded on 30.05.2019 wherein he, *inter alia*, stated that M/s. Rishi Kiran Roadlines started CHA work for M/s. PIPL since 1991; that he himself prepared and filed the Bills of Entry (warehouse and ex-bond) for M/s. PIPL. On being asked as to whether he knew the specifications/ properties of WAKSOL 9-11A and WAKSOL 9-11B, Sh. Jayesh Mistry replied that they receive Analysis report from the importer which contains all the specifications/ properties of WAKSOL 9-11A and WAKSOL 9-11B. The Analysis report was sent by supplier exporter M/s. Sasol Wax/ Sasol Chemicals; that the Bill of

Entry was finalized as per the documents received by them from the importer. The classification of goods was decided at once and thereafter no discussion regarding classification was done for each Bill of Entry as the goods were similar to the goods classified earlier; that they sent check list to importer by email for approval before filing of Bill of Entry; that the classification of WAKSOL 9-11A and WAKSOL 9-11B was decided by the importer M/s. PIPL on the basis of documents/ reports received by them from the manufacturer/ supplier/ exporter.

On being asked under which CTH, the import goods WAKSOL 9-11A and WAKSOL 9-11B were classified and what was the basis therefore, Sh. Jayesh Mistry replied that the goods namely WAKSOL 9-11A and WAKSOL 9-11B were classified under CTH 27101990. The classification of WAKSOL 9-11A and WAKSOL 9-11B was decided by the importer on the basis of % of oil content, carbon composition etc.; that the sample of import goods were tested at CH, Laboratory. The reports of CH Lab Kandla contained composition of import goods and specific classification was not mentioned in these reports. Since the classification was on import goods was done by the importer and no query/objection was received from the Department during Audit or any checks, they did not feel it necessary to examine the test reports relating to WAKSOL 9-11A and WAKSOL 9-11B.

On being asked what was the end use of WAKSOL 9-11A and WAKSOL 9-11B and whether his firm/company had ever made any effort to verify the composition/ properties of WAKSOL 9-11A and WAKSOL 9-11B and classification thereof, Sh. Jayesh Mistry replied that the importer could answer to this question, he was not aware about it. Since the classification was done at once for WAKSOL 9-11A and WAKSOL 9-11B by the importer on the basis of analysis report of M/s. Sasol Wax, they did not require any such effort. He provided B/E wise (Warehouse & Ex-Bond) details including details of corresponding Ex-Bond B/E, Description of goods, Qty., CTH, Assessable Value, Duty paid etc. in respect of import of Waksol-A, Waksol 9-11A and Waksol 9-11B by M/s. PIPL for the last five years and also provided copies of import documents.

On being shown Test Report C.No. 35-CRCL/2015/CL-40/DRI/14.9.15 dated 13.10.2015 of Chemical Examiner Grade-II, CRCL, New Delhi as per which the oil content in the said import goods was 15% by mass, he stated that he saw the Test Report C.No. 35-CRCL/2015/CL-40/DRI/14.9.15 dated 13.10.2015 of Chemical Examiner Grade-II, CRCL, New Delhi and put his dated signature on this report in token of having seen and perused the same; that as per this Test Report, the oil content in the said particular import goods/consignment was

15% by mass; that considering the Chapter Note for Ch. 27 as well as this Test Report, it appeared that the product under reference was not classifiable under CTH 27101990.

On being shown Technical Opinion of Custom House Laboratory, Kandla vide F.No. KCL/40/DRI-SIIB/08-09 dated 14.05.2019, Shri Jayesh Mistry put his dated signature on this report in token of having seen and perused the same. As regards the classification issue of goods declared as WAKSOL 9-11A and WAKSOL 9-11B, he stated that this being a technical matter, and the same should be answered by the importer who knew the specifications/composition/properties of the import goods better than them. However, as per this Technical Opinion of Custom House Laboratory, Kandla, the product under reference was classifiable under CTH. 3405; that he was not aware if there was any mala fide intention of the importer for mis-declaration with intent to make lesser payment of duty.

After going through the statements dated 23.02.2016 and 07.06.2017 of Shri Shivlal Goyal and Sh. K.C. Goyal, Directors of M/s. PIPL respectively, Shri Jayesh Mistry showed his agreement with the facts of comingling of the imported goods having different declared description, value etc. imported by M/s. PIPL and M/s. Kutch Chemical Industries Ltd. in same storage tank; that the process of taking delivery of goods which, were not given Out of Charge, was violation of provisions of erstwhile Section 62(2), Section 68(c) and 71 of Customs Act, 1962. However, the delivery was taken by the importer and they (Customs Broker) were not concerned with the delivery as they just inform the importer about the OOC of particular product but how to deliver the cargo was dealt with by the importer; that they had given the importer oral advise that the goods which were not given OOC, could not be taken out of warehouse except on clearance for home consumption or otherwise as provided under the provisions of Customs Act, 1962 and rules thereunder; that the importer themselves classified the product and they assumed that the oil content would be more than 70% by weight. So, they could not feel it necessary to advise the importer for classification.

16.8. Summons was issued to Shri Shivlal Goyal, Director of M/s. PIPL to record his further statement and to get his version on the Technical Opinion of Customs House, Laboratory, Kandla regarding classification of said products Waksol-A, Waksol 9-11A and Waksol 9-11B. However, he did not appear to tender statement and authorized Shri Vishnu P. Naykar, Manager (Import) of M/s. PIPL to tender statement on his behalf. **Statement of Shri Vishnu P. Naykar, Manager (Import) of M/s. PIPL**, was recorded on 10.06.2019 on behalf of their Director Shri Shivlal Goyal, wherein he, *inter alia*, stated that he

was authorized to give statement on behalf of Shri Shivlal Goyal, Director, M/s. PIPL and other Directors of the company and the statement was binding to them; that before making appearance in DRI, he had studied the earlier case papers with them and he was fully conversant with all relevant facts, so as to give statement; that their Director Shri Kailash Chand Goyal negotiates and finalizes the rate of products Waksol 9-11A and Waksol 9-11B with overseas supplier and the classification of WAKSOL 9-11A and WAKSOL 9-11B was already decided at once by their company M/s. PIPL under CTH 27101990 on the basis of information/ documents/ reports received by them from the manufacturer/ supplier/ exporter; that the classification of WAKSOL 9-11A and WAKSOL 9-11B was decided by their company after consulting with the manufacturer supplier viz. M/s. Sasol Wax, South Africa (presently known as M/s. Sasol Chemical, a division of M/s. Sasol South Africa Ltd.).

On being asked as to whether any written confirmation was there from the supplier manufacturer that the goods viz. WAKSOL 9-11A and WAKSOL 9-11B were classifiable under CTH 27101990, Shri Vishnu stated that he would check from the records of their company and would revert within two days. In this regard, Shri Vishnu P. Naykar vide letter dated 14.06.2019 informed that they have obtained an email from M/s. Apratim International, New Delhi the Indian representative of M/s. Sasol Chemical, South Africa alongwith South African Customs Declaration Form showing declaration of Waksol 9-11A under CTH 2712. He further stated that their company had not tested the import goods WAKSOL 9-11A and WAKSOL 9-11B to know its properties/specifications for deciding the classification; that the sample of import goods were tested at CH, Laboratory, Kandla consignment to consignment wise and report thereof were collected by them from the laboratory through CHA/Customs broker. These Test Reports were containing test results and visible identification of the product of sample but the CTH was not specified in the Test Reports of CH Lab Kandla; that Waksol 9-11A and WAKSOL 9-11B were used in manufacturing of chlorinated paraffin which was used in PVC Industries, Shoes Industries, marine paint industries etc. for flexibility; that he had seen the Test Report C. No. 35-CRCL/2015/CL-40/DRI/14.9.15 dated 13.10.2015 of Chemical Examiner Grade-II, CRCL, New Delhi, letter dated 25.01.2016 of M/s. Sasol and Product Data Sheets for Waksol A & Waksol B supplied by M/s. Sasol, South Africa; that as per the Test Report and Product data sheets, the oil content in the said particular import goods/consignment was less than 70% and hence as per these documents as well as the Ch. Note for Ch. 27, the product Waksol 9-11A and Waksol 9-11B was classifiable under CTH 27101990, however, he would make further study in the matter and supply further evidences. In this regard, Shri

Vishnu P. Naykar sent the letter dated 14.06.2019 which has been as discussed supra.

After going through the Technical Opinion of Custom House Laboratory, Kandla under F.No. KCL/40/DRI-SIIB/08-09 dated 14.05.2019, Shri Vishnu P. Naykar stated that as per the Technical Opinion of Custom House Laboratory, Kandla, the product under reference were classifiable under CTH 3405, however, he would make further study in the matter and supply further evidences, if any within two days. In this regard, Shri Vishnu P. Naykar sent the letter dated 14.06.2019 which has been as discussed supra.

On being asked, as to whether he agreed that the import goods declared as WAKSOL 9-11A and WAKSOL 9-11B by their company M/s. PIPL were mis-declared by way of mis-classification to evade differential duty, or otherwise and whether such mis-declaration was in his knowledge, Shri Vishnu P. Naykar deposed that as per the documents shown to him, it appeared that there was mis-declaration by way of mis-classification on the part of their company in respect of import of Waksol 9-11A and Waksol 9-11B, but whether it was intentional or not, their Directors Shri Shivlal Goyal or Shri Kailash Chand Goyal themselves could reply; that he was not aware about the purpose behind classification of said product under CTH 27101990; that he would discuss the matter with their Directors Shri Shivlal Goyal and/or Shri Kailash Chand Goyal in this regard. However, nothing has been provided by him in this regard.

Shri Vishnu P. Naykar showed his agreement with the facts of statement of Shri Shivlal Goyal and Shri K.C. Goyal, Director of M/s. PIPL that they used to comingle the imported goods having different declared description, value etc. imported by their companies M/s. Panoli Intermediates India Pvt. Ltd. and M/s. Kutch Chemical Industries Ltd. in same storage tank. He also agreed that after getting one of the import goods (comingled with other goods of different description) Out of Charged from Customs Authorities, the goods which were not done out of charge were also delivered being comingled with Out Of Charged goods and this process of taking delivery of goods which, were not given OOC, was violation of provisions of erstwhile Section 62(2); Section 68(c) and 71 of Customs Act, 1962. However, he clarified that he was not aware that time whether there was any violation of Customs law.

On being asked whether their company was ever advised (orally or in writing) by their appointed Customs Broker that this process of taking delivery of goods which, 1962 were not given OOC, was violation of provisions of erstwhile Section 62(2), Section 68(c) and 71 of Customs Act, 1962, he stated that he

was not aware about it and assured to inquire about the same from their Directors Shri Shivlal Goyal and Shri Kailash Chand Goyal. However, no response has been received from him.

Shri Vishnu P. Naykar also showed his agreement with the facts relating to their company M/s. PIPL in the statement dated 30.05.2019 of Shri Jayesh Natwarlal Mistry, Authorized Signatory of Customs Broker firm M/s. Rishi Kiran Roadlines and their group company M/s. Rishi Kiran Logistics Pvt. Ltd., Gandhidham. However, as regards the depositions of Shri Jayesh Mistry that they had given oral advise to M/s. PIPL regarding violation of provisions of Customs Act, 1962 by process of taking delivery of goods which were not given OOC, he assured to inquire about the correctness of submissions of Shri Jayesh Mistry from his Directors. In this regard, Shri Vishnu P. Naykar, vide the letter dated 14.06.2019 informed that earlier they had mixed various paraffins in Tanks as per routine practice of comingle tanks in Kandla Port due to shortage of tanks but nobody from their customs house agents or customs authorities informed/warned them regarding violation of relevant provisions of Customs Act, 1962 in this regard.

On going through the statements of Shri Krishan Kumar, Director of M/s. Apratim International Pvt. Ltd., New Delhi and Shri K.C. Goyal, Director of M/s. PIPL, Shri Vishnu P. Naykar has stated that he was not aware when and why their Director Shri K.C. Goyal requested to M/s. Apratim International Pvt. Ltd. to remove the word "reactor wax" from the manufacturing process of Waksol 9-11A provided by M/s. Sasol. He also showed his agreement with the facts relating to their company M/s. PIPL stated in the statement dated 30.03.2017 of Shri Mohammad Jamalbhai Aglodia, Technical Advisor (Process) of M/s. PIPL.

16.9 Summons dated 10.06.2019 were issued to Shri Shivlal Goyal and Shri K.C. Goyal , Directors of M/s. PIPL to get their version regarding classification of said goods viz. Waksol A, Waksol 9-11A, Waksol 9-11B etc. but they did not appear to tender their statement in this regard. Hence, the statement of Shri Vishnu P. Naykar, who was authorized to tender statement on behalf of the Directors is considered as the version of Directors of M/s. PIPL. Necessary legal action, may be initiated separately against Shri Shivlal Goyal and Shri K.C. Goyal, Directors of M/s. PIPL, if warranted.

DISCUSSION OF THE EVIDENCES: -

17. From the facts and evidences as discussed in the foregoing paras, it appeared that M/s. PIPL, are engaged in the manufacture of chemicals viz.

Chlorinated Paraffin Wax etc. and they are engaged in import of various raw materials including Waksol A, Waksol 9-11A, Waksol 9-11 B, Waksol 9-11, Waksol C9-11A etc. required for manufacturing of their final product and also for trading of the same. M/s. PIPL has warehoused the imported goods under in-bond Bills of entry and these warehoused consignments were later cleared under the ex-bond Bills of Entry. They were storing the imported goods at two liquid storage tanks of M/s. IMC Limited, Kandla and also comingling the imported goods with other goods having different description, specifications and imported by different company of their group. The goods viz. Waksol A, Waksol 9-11A, Waksol 9-11 B, Waksol 9-11, Waksol C9-11A etc. have been classified by M/s. PIPL under CTH 27101990 and cleared such goods by discharging duty.

18. The Heading 27.10 of Chapter 27 of Customs Tariff Act, 1975, covers the Petroleum Oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, waste oils. As per the HSN Chapter Notes, the Heading 27.10 does not include: (a) Preparations **containing less than 70% by weight of petroleum oils or of oils obtained from bituminous minerals,** for example textiles greasing or oiling preparations and other lubricating preparations of heading 34.03 and hydraulic brake fluids of heading 38.19. (b)

From above, it appeared that the percentage of oil content is main factor to decide classification of particular goods under Heading 27.10. However, in the instant case, the oil content was not available in the Analysis Report relating to the Products Waksol 9-11A / Waksol 9-11B/Waksol 9-11 as given hereunder.


19. Similarly, in the Product Data Sheet for the product Waksol 9-11A, Waksol 9-11B provided by supplier manufacturer M/s. Sasol, South Africa, the percentage of oil content by weight is not available as per the image of the Product Data Sheet shown below. However, the oil content in the Waksol A and Waksol B which are the main component (70-80% part) of Waksol 9-11A Waksol 9-11B, is 14 % (by mass) and 9% (by mass) respectively as per Product Data Sheets provided by supplier manufacturer M/s. Sasol, South Africa as per following images:-

| | | | | |
|--------------------------------|---------------|---|-----------------|--------------------|
| CERTIFICATE OF ANALYSIS | | | | Page 1 of 1 |
| Client | | Sasol Chemicals a division of Sasol South Africa (Pty) Ltd | | |
| Product | | Waksol 9-11 | | |
| Sample Origin | | Land Tank Sampling (After blending) Bidvest Tank Terminals Bay 3 TK634 | | |
| Sampling Method | | ASTM E300 | Sample Number | 11/15/0655 |
| Date Sampled | | 13 November 2015 | Time Sampled | 03:00 |
| Date Tested | | 13 November 2015 | Time Tested | 12:00 |
| Batch Number | | | Order Number | |
| Weather Condition | | | Client Ref. No. | |
| Intertek Job No. | | DBN093671/2015 | | |
| TEST DESCRIPTION | METHOD | SPECIFICATION | RESULT | |
| Appearance | ASTM D4176 | Bright and Clear | PASSES | |
| Colour(saybolt) | *ASTM D156 | + 15 min | +25 | |
| Density @ 20°C kg/l | *ASTM D4052 | Report | 0.7786 | |
| Density @ 35°C kg/l | *ASTM D4052 | Report | 0.7681 | |
| Flash Point (closedcup) °C | *ASTM D93 | 48 Min | 59.0 | |
| CARBON DISTRIBUTION: | | | | |
| C08 and Lighter mass % | GC | Report | 0.6 | |
| C12 - C20 mass % | GC | Report | 47.0 | |
| C21 - C30 mass % | GC | Report | 33.0 | |
| C9 - C11 mass % | GC | Report | 19.4 | |

Key: * SANAS ACCREDITED TEST + REFERENCE METHOD


Krishan Kumar
19-11-2016

Technical Signatory
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Intertek Testing Services (South Africa) (Pty) Ltd
Durban, Island View Laboratory
Corner Abadan and Sumatra Roads
Island View, Bluff
Tel: +27 31 466 3344
Fax: +27 31 466 1110 / 5410
Website: www.intertek.com
E-mail: ops.CBE.durban@intertek.com
P O Box 21062
Bluff, 4036

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Directors: M C Riby-Smith, D R Kunene, D P Ruddin



product data sheet

WAKSOL 9-11

Code 1450 Revision 3 9 October 2012

| Properties | Test method | Units | Specification | Typical values |
|-------------------------|-------------|---------|------------------|----------------|
| Flashpoint (Closed cup) | ASTM D 93 | °C | 48 min | 49 |
| Appearance | ASTM D 4176 | - | Bright and clear | Pass |
| Colour | ASTM D156 | Saybolt | + 15 min | 24 |
| Carbon Distribution: | Sasol 5047 | mass % | - | |
| C8 and lighter | | | - | 0.7 |
| C9-C11 | | | - | 19.7 |
| C12-C20 | | | - | 52.3 |
| C21-C30 | | | - | 27.3 |
| Density @ 20°C | ASTM D 4052 | Kg/l | - | 0.7783 |
| Density @ 35°C | ASTM D 4052 | Kg/l | - | 0.7689 |

Packaging
WAKSOL 9-11 is available in liquid in bulk

Note
Due to the nature and application of these products the storage life is limited. Therefore, to obtain the best performance from the product, we recommend use within 5 years from sample date on the Certificate of Analysis.

Notice This product information is indicative and does not include any guarantee

Sasol Wax (South Africa) (Pty) Ltd
ISO 9001/ISO 14001

Krishan
KRISHAN KUMAR
19.1.2016



product data sheet

Sasolwax Waksol A

Code 1520 Revision 8 18 April 2013

| Properties | Test method | Units | Specification | Typical values |
|--------------------------|-------------|---------|----------------------------|----------------|
| Appearance | Sasol 1074 | - | Free from foreign material | Pass |
| Cloud point | ASTM D5551 | °C | 48 max | 30 |
| Colour | Sasol 2000 | Saybolt | + 15 min | + 24 |
| Congealing point | ASTM D 938 | °C | 26 - 32 | 30 |
| Flash point at 101.3 kPa | ASTM D93 | °C | 120 min | 150 |
| Oil Content | ASTM D721 | mass % | 22 max | 14 |

Packaging
Sasolwax WAKSOL A is supplied in 153kg open top steel drums

Note
Due to the nature and application of these products the storage life is limited. Therefore, to obtain the best performance from the product, we recommend use within 5 years from sample date on the Certificate of Analysis.

Notice This product information is indicative and does not include any guarantee

Sasol Wax (South Africa) a division of Sasol Chemical Industries Limited
ISO 9001/ISO 14001

Krishan
KRISHAN KUMAR
19.1.2016

product data sheet



Code 1516 Revision 2 30 July 2015

| Properties | Test method | Units | Specification | Typical values |
|-----------------|-------------|--------|---------------|----------------|
| Congeeing point | ASTM D 938 | °C | 34 min | 42 |
| Colour | ASTM D1500 | ASTM | 2 max | 1.5 |
| Oil Content | ASTM D721 | mass % | 12 max | 9 |

Sasolwax Waksol B is supplied in 153kg open top steel drums.

Due to the nature and application of these products the storage life is limited. Therefore, to obtain the best performance from the product, we recommend use within 5 years from sample date on the Certificate of Analysis.

This product information is indicative and does not include any guarantee

Sasol Chemicals a division of Sasol South Africa (Pty) Ltd.
ISO 9001/ISO 14001

Product Data Sheet for the product Waksol B

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“The product u/r, “WAKSOL 9-11 A” does not fall under chapter 2710, i.e. from 27012 to 27109900, of ‘Petroleum oils and oils obtained from Bituminous Minerals, other than crude; preparations not elsewhere specified or included, containing By weight 70% or more of Petroleum oils or of oils obtained from Bituminous minerals, These oils being the basic constituents of the preparation; Waste oils’, as the sample containing oils less than 70.0%.”

20.1 During the course of investigation, Shri Vishnu P. Naykar, Manager (Import) and Authorised Signatory of M/s. PIPL submitted vide letter dated 14.06.2019 that the manufacturer supplier M/s. Sasol, South Africa are classifying their export product Waksol 9-11A under CTH 2712. Thus, it appeared that the product under question were not classifiable under CTH 2710 and M/s. PIPL have mis-declared the said products by way of misclassification.

CLASSIFICATION OF WAKSOL SERIES PRODUCTS VIZ. WAKSOL 9-11A, WAKSOL 9-11B, ETC.:-

21. As per supplier manufacturer M/s. Sasol, South Africa, Waksol 9-11A is a blend comprising of between 70 % to 80% Waksol A and at least 20% C9-C11 n-paraffins and it is liquid at 20 Deg C. Similarly, Waksol 9-11B is produced from Waksol-B. Whereas, M/s. Sasol explained the manufacturing process of Waksol A as under:-

“The product of Fischer Tropsch synthesis known as reactor wax, which has been separated from water and liquid (at room temperature) condensates, is distilled into a number of components in a vacuum distillation column. There are four main products of this column namely;

- (i) Paraffin Feed, comprising hydrocarbons <C20*
- (ii) Waksol A, comprising mainly hydrocarbons C14-C28*
- (iii) Medium Wax, comprising mainly hydrocarbons C24-C42*
- (iv) Hard Wax, comprising hydrocarbons >C28*

The Waksol A is produced to a congealing point specification of between 23 and 32 deg C but is more typically 26-28 deg C. It is a waxy oil which cannot be solidified in slabs, pastillies or flakes like waxes as at room temperature (20 deg C) it is still partially liquid. For the same reason, it is also not considered a liquid paraffin although chemically it is similar to both waxes and liquid paraffins.

The name “Waksol” is derived from a combination of African words ‘Waks’ (Wax) and ‘Olie’ (oil) due to its nature. It is convenient to handle

the material as if it was a very soft wax to ensure it is fully liquid and homogeneous, otherwise separation could occur during handling. Waksol is a product unique to the Fischer Tropsche process. The nearest equivalent in crude oil refining is “slack” wax, however, Waksol is chemically more n-paraffinic and contains a much higher proportion of lower carbon numbers.

Waksol A does not meet the definition of wax according to the European Wax Federation and for this reason is not included in Sasol’s Reach registration for Fischer Tropsch waxes. Waksol A’s main uses are as a refinery cracker feed and as a heavy paraffin component in liquid paraffin blends for solvents applications.”

21.1. The product Waksol 9-11A and Waksol 9-11B are admittedly used in manufacturing of Chlorinated Paraffin which is used in PVC/ PVC pipe/ rubber pipes Industries, Shoe Industries, Oil Paint, Marine paint Industries, Polymer Industries, Polish, Lubricant additives etc. as stated by Shri K.C. Goyal, Director, M/s. PIPL, Shri Vishnu P. Naykar, Manager (Import) of M/s. PIPL and Shri Mohammad Jamalbhai Angolia, Technical Adviser (Process), M/s. PIPL. The literature of product Waksol 9-11A provided by the supplier manufacturer states that the Waksol 9-11A is produced by blending Waksol A and C9-C11 Paraffins in proprietary ratio. The General note to HSN for Ch. 34 states that this chapter covers products mainly obtained by the industrial treatment of fats, oils or waxes (e.g. soap, certain lubricating preparations, prepared waxes, certain polishing or scouring preparations, candles). It also includes certain artificial products e.g. surface-active agents, surface active preparations and artificial waxes.

21.2. The Heading No. 34.05 of Customs Tariff, covers “Polishes and creams, for footwear, furniture, floors, Coachwork, Glass or Metal, Scouring pastes and powders and similar preparations (whether or not in the form of paper, wadding, felt, nonwovens, cellular plastics or cellular rubber, impregnated, coated or covered with such preparations), excluding waxes of heading no. 34.04”. The General HSN explanatory notes to Heading no. 34.05 clarifies that this heading covers polishes and creams for footwear, furniture, floors, coachwork, glass or metal (silverware, copper etc.) and prepared pastes or powders for scouring cooking Utensils, sinks, tiles, stoves, etc. and similar preparations such as polishes and creams for leather. The heading also includes polishes preparations with preservative properties. These preparations may have a basis of wax, abrasives or other substances.

21.3. From the above parameters of ascertaining classification of any product under Ch. 34, heading 34.05, manufacturing process of Waksol 9-11A and

Waksol 9-11B, their end uses as confirmed by the representatives of M/s. PIPL, it appeared that the products viz. Waksol 9-11A and Waksol 9-11B are classifiable under CTH 34.05. In order to confirm the classification of said products, Technical Opinion of Custom House Laboratory, Kandla was sought vide letter dated 30.04.2019 vide which it was specifically asked to opine under which CTH, the product Waksol 9-11A was classifiable. The Joint Director, Custom House Laboratory, Kandla where the testing of representative samples was also done, opined vide their report dated 14.05.2019, that as this sample is not any of the waxes falling under Chapter 271210 to 27129090 or not of Petroleum oils and oils obtained from Bituminous Minerals, preparation containing 70% or more than of Petroleum oils from 271012 to 27109900 and it is blend/mixture of WAKSOL A, a synthetic Paraffin wax and Paraffin having Carbon number C9-C12. The Paraffin C9-C11 is a ingredient used as carrier to improve consistency of polishes in which the WAKSOL A is a principal component used to import water proof, wear resistant and other properties of polishes and thus the blend of paraffin C9-C11 and WAKSOL A to get the preparation "WAKSOL 9-11 A" correctly falls under the chapter 3405.20.

21.4 From the facts of foregoing Paras, it appeared that the classification declared in the Warehouse Bills of Entry and corresponding Ex-Bond Bills of Entry & Bills of Entry for Home Consumption are not correct as the goods have been mis-classified.

REJECTION OF CLASSIFICATION DECLARED BY M/S. PIPL: -

22. The classification of the goods in question, at the time of filing Warehouse Bills of Entry and their corresponding ex-bond Bills of Entry & Bill of Entry for home consumption was not correct, as was required from them under Section 46(4) of the Customs Act, 1962 read with Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rules 11 & 14 of the Foreign Trade (Regulation) Rules, 1993. The facts and evidences suggest that the said importers had failed to furnish correct classification of the goods in question. The Test Reports of the goods in question and Technical Opinion of the Custom House Laboratory clearly indicated that the goods, viz., Waksol-A, Waksol 9-11A and Waksol 9-11B etc. appeared to be aptly classifiable under Customs Tariff Heading 34052000 instead of CTH 27101990. It further appeared that the classification of the goods in question was done under CTH 27101990, by M/s. PIPL with intent to evade payment of differential Customs Duties as the Duty rate under CTH 3405 was higher than that under CTH 2710. It, thus, appeared that the subject products are liable to be classified in the residual entry of the said heading at 34052000 and the classification of such products done by M/s. PIPL under CTH 27101990 is liable to be rejected.

DEMAND: -

23. After issuance of show cause notice dated 22.01.2020, a Supplementary Show Cause Notice No. DRI/AZU/GRU-26/Panoli(INT-26/2015)/2019 dated 07.02.2020, has been issued wherein it has been submitted that all the Into Bond (Warehouse) Bills of Entry mentioned in Col. (2) of the Annexure-A were filed by M/s. PIPL, however, the corresponding Ex-Bond Bills of Entry mentioned in Col. (4) of the Annexure-A were filed by M/s. PIPL and other importers also who got cleared the subject goods vide Ex Bond Bills of Entry as detailed in **Annexure-B** (substituted from Annexure-A) to the Supplementary notice. Thus, the facts of the Show Cause Notice dated 22.01.2020 were amended and the quantum of demand of differential duty was reduced from M/s. PIPL to the extent the same was being made from other the respective importers/ noticees vide Supplementary notice.

23.1 It appeared that the importers/noticees have intentionally adopted mis-classification of import product under CTH 2710 in place as of correct CTH 3405 as the goods classifiable under CTH 3405 were attracting a higher rate of Customs Duty during the period covered under Show Cause Notice dated 22.01.2020. They have knowingly suppressed the fact that the import products were containing oil content of less than 70% by weight. This fact shows that instead of classifying the import goods on merit, they had intentionally resorted to mis-classification for avoiding their higher duty liability that would have accrued to them if they had correctly classified the same. From the above discussed facts, it appeared that these importers/ noticees were aware of composition and properties of the said imported products. By suppressing this material fact they managed to misclassify the subject import products under CTH 2710 and evaded appropriate Customs Duty against the goods imported by them vide various Bills of Entry as detailed in **Annexure-B** of the Supplementary Notice. The duty involved in such Bills of Entry has been short paid by way of deliberate mis-representation, suppression of facts and willful mis-statement on the part of these importers/noticees. They have short paid Customs Duty totaling to Rs.7,93,41,037/- for the period 27.06.2014 to 02.04.2019 (as detailed in Annexure-B to the Notice) by misclassifying the same under CTH 2710. Therefore, the said amount of Rs. 7,93,41,037/- was liable to be demanded and recovered from them in terms of Section 28 (4) of the Customs Act, 1962 by invoking the extended period of five years; alongwith applicable interest under Section 28AA of Customs Act, 1962.

23.2 In view of the facts stated above, **Annexure-B** having, inter-alia, details of goods with corresponding Bills of Entry which had been imported by importers/noticees having short payment of Customs Duties and in

contravention of provisions of Customs Act, 1962 were liable to confiscation under Section 111(j) and 111(m) of the Customs Act, 1962 as discussed above, was attached to the SupplementaryNotice read with said Show Cause Notice dated 22.01.2020. The details of subject goods, value of goods and differential duty liable to be demanded/recovered from the importers/noticees alongwith respective adjudicating authorities are detailed in below table:

Table-5

| Sr. No. | Details of Importer/Bills of Entry | Assessable Value (in Rs.) | Differential Duty (in Rs.) | Jurisdictional Adjudicating Authorities |
|---------|------------------------------------|---------------------------|----------------------------|--|
| 1 | 2 | 3 | 4 | 5 |
| 1 | As per Annexure-B | 31,04,88,715 | 2,69,99,612 | The Principal Commissioner of Customs, Customs House Ahmedabad |
| 2 | As per Annexure-B | 88,99,65,236 | 5,23,41,425 | The Principal Commissioner of Customs, Customs House Kandla |
| | Total | 120,04,53,951 | 7,93,41,037 | |

The Test Reports dated 13.10.2015 & 02.11.2016 and Technical Opinions dated 30.04.2019 and 14.05.2019 of Custom House Laboratory clearly showed that the subject goods were wax preparations and appropriately classifiable under CTH 3405, whereunder the rate of Customs Duty were higher as compared to that under CTH 27101990. From the statement of Shri Krishan Kumar, Director of M/s. Apratim International Pvt. Ltd., an agent of overseas manufacturer supplier in this case, it appeared that M/s. PI IPL deliberately suppressed the facts regarding properties of the import goods as admitted by Shri K.C. Goyal, Director of M/s. PI IPL who directed Shri Krishan Kumar to remove the word “reactor wax” from the manufacturing process of import goods. From the depositions of Shri Krishan Kumar, it further appeared that Shri K.C. Goyal and other Directors/Management of M/s. PI IPL were well aware about the implication of higher duties on said import goods and they have knowingly and deliberately mis-classified the import goods under CTH 27101990 with intent to evade the differential Customs Duties. Even after initiation of investigation by DRI and on receipt of manufacturing process from overseas supplier manufacturer they have attempted to suppress the material facts from the Department with clear intention to evade the govt. revenue and to mis-lead the investigation.

24. By the aforesaid acts of willful mis-statement and suppression of facts, M/s. PI IPL and other importers/ co-noticees had short-paid the applicable

Customs Duty and other allied duties/ taxes by way of deliberate misrepresentation, willful mis-statement and suppression of facts in order to evade the differential duty leading to revenue loss to the government exchequer. Hence, the provisions of Section 28(4) of Customs Act, 1962 for invoking extended period to demand the evaded duty was clearly attracted in this case. The differential duties on imports were liable to be demanded and recovered from them under Section 28(4) of Customs Act, 1962 along with applicable interest under Section 28AA of Customs Act, 1962. From the facts on record, it further appeared that M/s. PIPL used to clear the comingled warehoused goods from the warehouse for home consumption without obtaining an order from the proper officer for clearance of such goods for home consumption. They had mis-declared the import goods with respect to their classification and/or cleared in comingled cargo without obtaining order from Proper Officer were also liable to confiscation under Sections 111(j) and 111(m) of the Customs Act, 1962. The importer/any person, who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, was liable to penalty under Section 112(a) of the Customs Act, 1962. M/s. PIPL was, thus liable to penalty under Section 112(a) of the Customs Act, 1962. They were involved in carrying, removing, depositing, selling and dealing with the subject goods which were liable to confiscation under Section 111 of Customs Act, 1962. For this commission and omission on the part of M/s. PIPL they are liable to penalty under Section 112 (b) of the Customs Act, 1962 too. M/s. PIPL cleared warehoused goods comingled with goods of other importer, without order by proper officer of Customs as admitted by Shri Shivlal Goyal, Shri K.C. Goyal, both Directors and Shri Vishnu P. Naykar, Manager Import, CHA etc., they were liable for penalty under Section 117 of Customs Act, 1962. Further, since the subject amount of duty was evaded by M/s. PIPL by way of suppression of facts and willful mis-statement, they were also liable to penalty under Section 114A of the Customs Act, 1962. Since, M/s. PIPL and its representatives knowingly and intentionally mis-declared the import goods by way of false or incorrect declarations, in material particular, for the purposes of evasion of import duties under the Customs Act, 1962, therefore they shall also be liable to penalty under Section 114AA of the Customs Act, 1962.

25. From the facts discussed in foregoing paras, it appeared that M/s. PIPL had intentionally adopted mis-classification of import product under CTH 2710 in place as of correct CTH 3405 as the goods classifiable under CTH 3405 were attracting a higher rate of Customs Duty. M/s. PIPL knowingly suppressed the fact that the import products were containing oil content of less than 70% by weight and also attempted to suppress the manufacturing process of the

subject goods by way of removing the word 'reactor wax' from the manufacturing process received from the manufacturer supplier. This fact shows that instead of classifying the import goods on merit, they had intentionally resorted to mis-classification for avoiding their higher duty liability that would have accrued to them if they had correctly classified the same. From the above discussed facts, it appeared that M/s. PIPL were aware of composition and properties of the said import products. By suppressing this material fact they managed to misclassify the subject import products under CTH 2710 and evaded appropriate Customs Duty against the goods imported by them vide various Bills of Entry as detailed in **Annexure-B**(substituted from Annexure-A).

26. Role and culpability of Shri Shivlal Goyal and Shri K.C. Goyal, Directors of M/s. PIPL:-The Central Excise & Customs laboratory, has specifically reported that the subject import products were containing oil content less than 70%;and similar facts have been noticed from the literature of import products received from manufacturer supplier. In the Product Data Sheet for the product Waksol A and Waksol B, which are the main component (70-80% part) of Waksol 9-11A & Waksol 9-11B respectively, the percentage of oil content, is only 14% (by mass) in Waksol A and 9% (by mass) in Waksol B. Whereas, for deciding the classification under CTH 2710, the oil content should be more than 70% by weight. Thus, it was clear that the import products, viz., Waksol A, Waksol 9-11A and Waksol 9-11B, were not classifiable under CTH 2710; even then M/s. PIPL classified the said products under CTH 2710 with intent to evade the payment of appropriate Customs Duty. The end use of product Waksol 9-11A and Waksol 9-11B, its properties and Chapter Notes/parameters for classification under CTH 3405, were clearly indicating these products were classifiable under CTH 3405. Shri Shivlal Goyal and Shri K.C. Goyal, Directors of M/s. PIPL were fully aware and masterminds behind the modus operandi of evasion by way of mis-declaration and misclassification. As admitted Shri K.C. Goyal, Director of M/s PIPL attempted to get changed the manufacturing process received from supplier manufacturer M/s. Sasol, South Africa so that the Department could not ascertain the properties of the products and the appropriate classification thereof. Thus, Shri K.C. Goyal, the Director of M/s PIPL attempted to mislead the investigation. They were involved in carrying, removing, depositing, selling and dealing with the subject goods which were liable to confiscation under Section 111(j) and 111(m) of Customs Act, 1962. Had the DRI not initiated inquiry against M/s. PIPL on the basis of intelligence, they would have continued with the evasion of Govt. revenue. By making mis-declaration and mis-classifying their goods in Customs documents and influencing M/s Sasol for the purpose of evasion of

duty they have caused to be made, signed or used, declaration/ statement/ document which was false or incorrect in material particulars, in the transaction of business for the purposes of this Act and hence are also liable to a penalty under Section 114AA of Customs Act, 1962. Shri Shivlal Goyal and Shri K.C. Goyal, Directors of M/s. PIPL were also aware and concerned in clearing the comingled warehoused goods without obtaining order from the proper officer and involved in violation of erstwhile Section 62(2), Section 68(c) and 71 of Customs Act, 1962. Further, the Summons dated 10.06.2019 issued to Shri Shivlal Goyal and Shri K.C. Goyal, Directors of M/s PIPL under the provisions of section 108 of the Customs Act, 1962, but on flimsy grounds they avoided to make appearance before the investigating officer and thereby they have violated the provisions of sec 108 of the Customs Act, 1962.

By these acts, Shri Shivlal Goyal and Shri K.C. Goyal, Directors of M/s. PIPL have rendered themselves liable to penalty under provisions of Section 112(a), 112(b), Section 114AA and Section 117 of the Customs Act, 1962.

Role and culpability of importers/noticees other than M/s. PIPL:-

26.1 The role and culpability of M/s. PIPL, its Directors and other persons such as Supplier, Custodian, Customs Broker etc. have already been narrated in the Show Cause Notice dated 22.01.2020. The role and culpability of importers/noticees who have filed Ex-Bond Bills of Entry were added in the Supplementary Notice.

26.2 The other importers/noticees who have filed the Ex-Bond Bills of Entry in respect of import of Waksol-A, Waksol 9-11A, Waksol 9-11, Waksol C9-11A etc. misdeclared the subject goods by way of mis-classifying the same under CTH 27101990 instead of appropriate CTH 34052000 and discharged the Customs duty liability during the period covered under the Show Cause Notice i.e. from 27.06.2014 to 02.04.2019 as detailed in Annexure-B. Whereas, the Test Reports dated 13.10.2015 & 02.11.2016 and Technical Opinions dated 30.04.2019 and 14.05.2019 of Custom House Laboratory clearly showed that the subject goods were wax preparations and were appropriately classifiable under CTH 3405, whereunder the rate of Customs Duty were higher as compared to that under CTH 27101990. Thus, it appeared that the importers/noticees had deliberately suppressed the facts regarding properties of the import goods by way of knowingly and deliberately mis-classifying the import goods under CTH 27101990 with intent to evade the differential Customs Duties.

26.3 By the aforesaid acts of willful mis statement and suppression of facts, the importers/noticees had short-paid the applicable Customs Duty and other allied duties/taxes by way of deliberate mis-representation, willful mis-statement and suppression of facts in order to evade the differential duty leading to revenue loss to the government exchequer. Hence, the provisions of Section 28(4) of Customs Act, 1962 for invoking extended period to demand the evaded duty is clearly attracted in this case. The differential duties on imports were liable to be demanded and recovered from them under Section 28(4) of Customs Act, 1962 along with applicable interest under Section 28AA of Customs Act, 1962. From the facts on record, they have mis-declared the import goods with respect to their classification and therefore, the goods imported by them and mis-declared by way of misclassification were also liable to confiscation under Sections 111(j) and 111(m) of the Customs Act, 1962. The importer/any person, who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, is liable to penalty under Section 112 (a) of the Customs Act, 1962. These importers/noticees are, thus liable to penalty under Section 112 (a) of the Customs Act, 1962. They were involved in carrying, removing, depositing, selling and dealing with the subject goods which were liable to confiscation under Section 111 of Customs Act, 1962. For this commission and omission on the part of these importers/noticees, they are liable to penalty under Section 112 (b) of the Customs Act, 1962 too. Further, since the subject amount of duty was evaded by these importers/noticees by way of suppression of facts and willful mis-statement, they are also liable to penalty under Section 114A of the Customs Act, 1962. Since, these importers/noticees and its representatives knowingly and intentionally mis-declared the import goods by way of false or incorrect declarations, in material particular, for the purposes of evasion of import duties under the Customs Act, 1962, therefore they shall also be liable to penalty under Section 114AA of the Customs Act, 1962.

26.4 From the facts discussed in foregoing paras, it appeared that the importers/noticees have intentionally adopted mis-classification of import product under CTH 2710 in place as of correct CTH 3405 as the goods classifiable under CTH 3405 were attracting a higher rate of Customs Duty during the period covered under Show Cause Notice dated 22.01.2020. They have knowingly suppressed the fact that the import products were containing oil content of less than 70% by weight. This fact shows that instead of classifying the import goods on merit, they had intentionally resorted to mis-classification for avoiding their higher duty liability that would have accrued to them if they had correctly classified the same. From the above discussed facts,

it appeared that these importers/noticees were aware of composition and properties of the said import products. By suppressing this material fact they managed to misclassify the subject import products under CTH 2710 and evaded appropriate Customs Duty against the goods imported by them vide various Bills of Entry as detailed in **Annexure-B** attached with the Supplementary Notice. The duty involved in such Bills of Entry has been short paid by way of deliberate mis-representation, suppression of facts and willful mis-statement on the part of these importers/noticees. They have short paid Customs Duty totaling to Rs.7,93,41,037/- for the period 27.06.2014 to 02.04.2019 (as detailed in Annexure-B to the Notice) by misclassifying the same under CTH 2710. Therefore, the said amount of Rs.7,93,41,037/- was liable to be demanded and recovered from them in terms of Section 28 (4) of the Customs Act, 1962 by invoking the extended period of five years; along with applicable interest under Section 28AA of Customs Act, 1962.

26.5 In view of the facts stated above, **Annexure-B** having, inter-alia, details of goods with corresponding Bills of Entry which have been imported by importers/noticees having short payment of Customs Duties and in contravention of provisions of Customs Act, 1962 were liable to confiscation under Section 111(j) and 111(m) of the Customs Act, 1962 as discussed above, was attached to the Supplementary Notice read with said Show Cause Notice dated 22.01.2020. The details of subject goods, value of goods and differential duty liable to be demanded/recovered from the importers/noticees along with respective adjudicating authorities as mentioned in table-5 above.

27. Role and culpability of Customs Broker firm/company M/s. Rishi Kiran Roadlines, Gandhidham and M/s. Rishi Kiran Logistics Pvt. Ltd., Gandhidham:-

M/s. Rishi Kiran Roadlines were looking after the CHA/Customs Broker work of M/s. PIPL since 1991. They were well aware about the nature of and specifications of the goods imported by M/s. PIPL. They were also well aware about the comingling of the imported goods having different declared description, value etc. imported by M/s. PIPL and M/s. Kutch Chemical Industries Ltd. in same storage tank and were also aware that the process of taking delivery of goods which, had not been given Out of Charge, is violation of provisions of erstwhile Section 62(2); Section 68(c) and 71 of Customs Act, 1962. Shri Jayesh Natwarlal Mistry in his statement dated 30.05.2019 deposed that they had orally advised their client M/s. PIPL about the violation of provisions of Customs Act, 1962 by way of adopting above practice of comingling of import goods and taking delivery of warehoused goods which were not given out of charge. However, he could not produce any evidence in this regard, while M/s. PIPL contradicted his version as they informed vide

letter dated 14.06.2019 that they were not advised/ warned by said CHA/Customs Broker. Moreover, the said CHA/Customs Broker was having another option to inform the Customs Authorities about these violations but they failed to bring the same to the notice of Customs Authorities. They further failed to advise their clients regarding the correct classification of the subject goods also they failed to bring the facts to the notice of the Customs authorities at the material time of import while claiming classification under CTH 2710. The CHA firm has therefore, not fulfilled the obligations cast upon them under Regulation 11 of CBLR, 2013 read with Regulation 10 CBLR, 2018. The Customs Broker firm M/s. Rishi Kiran Roadlines and M/s. Rishi Kiran Logistics Pvt. Ltd. have acted as agent of M/s. PIPL, to clear the consignments of mis-classified subjected goods, which they knew or had reason to believe were liable to confiscation under Section 111 of Customs Act, 1962. They were involved in dealing with the subject goods which were liable to confiscation under Section 111 of Customs Act, 1962. In so far as they handled and filed Customs documents giving therein the mis-classification of goods for the purpose of evasion of duty they have signed or used, declaration/ statement/ document which was false or incorrect in material particulars, in the transaction of business for the purposes of this Act and hence are also liable to a penalty under Section 114AA of Customs Act, 1962. Hence, by the said acts of commission and omission, M/s. Rishi Kiran Roadlines and M/s. Rishi Kiran Logistics Pvt. Ltd. have rendered themselves liable for penal action under the provisions of Section 112(a), 112(b), Section 114AA and Section 117 *ibid*.

27.1 Role and culpability of M/s. IMC Ltd., Kandla:- It is admitted fact that M/s. IMC Ltd., having public warehouse (liquid terminals), was custodian in the present case for storage of goods imported by M/s. PIPL and their group company M/s. Kutch Chemical Industries Pvt. Ltd. The importers M/s. PIPL in connivance with M/s. IMC Ltd., as well as with the respective Customs Broker M/s. Rishi Kiran Roadlines, Gandhidham and M/s. Rishi Kiran Logistics Pvt. Ltd., Gandhidham were storing their imported goods (mainly chemicals) with the different imported goods imported by different companies in the same storage tanks. This co-mingling of different type of imported goods resulted in coming into being/manufacturing of a different product. Further, in case when one specific product was given out of charge and another different product in comingled state is cleared, the clearance of such different product (which was not given out of charge) was taking place without order of the Proper Officer. Shri Devendra Dadhich, Terminal Manager of M/s. IMC Ltd. in his statement dated 03.02.2016 stated that the process of taking delivery of goods which have not been given Out of Charge, is violation of provisions of erstwhile Section 62(2), Section 68(c) and 71 of Customs Act,

1962; thus it appeared that they were knowingly involved in this offence and contravention of provisions of Customs Act, 1962. It further appeared that no permission of manufacturing under section 65 of Customs Act, 1962 was obtained by the importer M/s. PIPL or the custodian M/s. IMC Ltd. in this regard. Hence, it appeared that for the acts of omission and commission on the part of M/s. IMC Ltd., they are liable to penalty under Section 73A(3) of the Customs Act, 1962. It is apparent that they have removed the dutiable goods other than the goods for which the clearance was sought from a warehouse without permission of the proper officer violating the provisions of Customs Act, 1962 and hence they were engaged in possession, removal, dealing with the subject goods and have rendered such goods liable for confiscation under Section 111(j) of Customs Act, 1962. M/s. IMC Ltd. is thus further liable to penalty under Section 112(a) and 112(b) of Customs Act, 1962. It further appeared that for their above discussed act, they are also liable for action under Section 58B of Customs Act, 1962 for which separate action may be taken against them by the jurisdictional Customs authorities.

27.2. Role and culpability of M/s. Sasol, South Africa [M/s. Sasol Chemical (Wax), a Division of Sasol Chemicals Industries Pty. Ltd./M/s. Sasol (South Africa) Pty. Ltd., South Africa]:- M/s. Sasol was the main supplier & manufacturer of subject goods to M/s. PIPL. During the course of investigation, the said supplier/M/s. Sasol (South Africa) Pty. Ltd., South Africa was asked to provide the manufacturing process of subject goods. Investigation revealed that M/s. Sasol (South Africa) Pty. Ltd. directed their consultant cum marketing agent M/s. Apratim International Pvt. Ltd. to suppress the actual manufacturing process of subject goods, to mis-lead the investigation and actual classification of subject goods. Investigation further revealed that the supplier had attempted to suppress the manufacturing process of subject goods through their marketing agent on being insisted by Shri K.C. Goyal, Director of importer M/s. PIPL, as has been discussed above. It thus appeared that M/s. Sasol (South Africa) Pty. Ltd., South Africa have abetted the importer for mis-declaration by way of suppression and submitting false and fabricated information/documents through their marketing agent for onward submission to DRI. For the above acts of omission and commission on their part, M/s. Sasol (South Africa) Pty. Ltd., South Africa are liable to penalty under Section 112(a), 112(b) and Section 114AA of the Customs Act, 1962.

28. The rate of Customs Duty applicable on CTH 27101990 and 34052000 from time to time are as follows:-

Table-6

| Period | CTH 27101990 | | | | | CTH 34052000 | | | | |
|--------------------------------|--------------|--------------|--------------|-----------------------------|----------------|--------------|--------------|------------|-----------------------------|--------------------|
| | BCD | CVD/ IGST | CESS ES | OTHE RS (ACD/ SAD) | TOTAL | BCD | CVD/I GST | CES SES | OTHE RS (ACD/ SAD) | TOTAL |
| 27.06.2014 to 28.02.2015 | 5% | 14% | 0.59% ** | -* | | 10% | 12% | 0.7 0% | 4% | 28.852 % |
| 01.03.2015 to 30.06.2017 | 5% | 14% | 0.59% ** | -* | 20.291% | 10% | 12.5% | 0.7 1% | 4% | 29.441 % |
| 01.07.2017 to 31.01.2018 | 5% | 18% | 0.15% ** | - | 24.077% | 10% | 28% | 0.3 0% | - | 41.184 % |
| 01.02.2018 to 02.04.2019 | 5% | 18% | 0.50% *** | - | 24.490% | 10% | 18% | 1% | - | 30.980 % |

* SAD on CTH 27101990 was Nil for the period from 27.06.2014 to 30.06.2017, however, the importer has paid 4% SAD on the imported goods.

** Education Cess & Sec & Higher Education Cess under Customs Act, 1962

*** Social Welfare Surcharge under Customs Act, 1962

29. In view of the above M/s. Panoli Intermediates (India) Pvt. Ltd., having corporate office at 'Sara Niwas', 20-21, Harinagar Co-Operative Society, Gotri Road, Vadodara -390007 (IEC No. 0599048522) were called upon to show cause in writing to the Adjudicating Authorities above mentioned Table-5 in respect of the import made vide Bills of Entry mentioned in column No. 2 of the Supplementary notice, as to why:-

(a) The classification of imported goods i.e. Waksol A/ Waksol 9-11A / Waksol 9-11/ Waksol C9-11A etc. having total Quantity 15406.63 MT (10199.836 MT imported at Kandla and 5206.798 MT imported at Hazira), totally valued at Rs. 62,79,42,514/- (Rs. 45,65,01,757/- for Kandla and Rs. 17,14,40,757/- for Hazira) covered under Bills of Entry as mentioned in Annexure-B to the Supplementary Notice under CTH 27101990, should not be rejected and why the same should not be re-classified under **CTH 34052000** under Customs Tariff Act, 1975;

(b) The differential duty amount aggregating **Rs.4,07,61,433/-** (Rs.1,97,94,219/- for Kandla and Rs.2,09,67,214/- for Hazira), payable on import of Waksol A/ Waksol 9-11A/ Waksol 9-11/Waksol C 9-11A etc. valued at Rs.62,79,42,514/-, as detailed in Annexure-B to the Supplementary Notice, should not be demanded and recovered from

them under Section 28(4) of the Customs Act, 1962 along with interest in terms of Section 28AA of the Customs Act, 1962.

(c) The goods viz. Waksol A/ Waksol 9-11A/ Waksol 9-11/Waksol C 9-11A etc. total Quantity 15406.63 MT (10199.836 MT imported at Kandla and 5206.798 MT imported at Hazira), totally valued at Rs.62,79,42,514/- (Rs.45,65,01,757/- for Kandla and Rs.17,14,40,757/- for Hazira), should not be confiscated under the provisions of Section 111(j) and 111(m) of the Customs Act, 1962. Since the same were not physically available for confiscation, why Redemption Fine should not be imposed upon them under Section 125 of the Customs Act, 1962;

(d) Penalty should not be imposed on them under Section 112(a)& (b) /114A, Section 114AA and 117 and of the Customs Act, 1962.

29.1 The other noticees/importers mentioned in **Table-7** below were called upon to show cause in writing to the Adjudicating Authorities mentioned in the above Table-5 in respect of the import made vide Bills of Entry mentioned in column No. 2 in Annexure-B to the Supplementary notice, as to why:-

- (a) The classification of imported goods i.e. Waksol A/ Waksol 9-11A / Waksol 9-11/ Waksol C 9-11A etc. having total Quantity and Declared Value in respective row/column of Table-II of the Supplementary Show Cause Notice and details of Bills of Entry mentioned in Annexure-B to this Supplementary Notice under CTH 27101990, should not be rejected and why the same should not be re-classified under **CTH 34052000** under Customs Tariff Act, 1975;
- (b) The differential duty amount as mentioned in respective row/column of Table-II of the Supplementary Show Cause Notice, payable on import of Waksol A/ Waksol 9-11A/ Waksol 9-11/Waksol C 9-11A etc. valued at the details mentioned in said Table-II and also detailed in Annexure-B to the Supplementary Notice, should not be demanded and recovered from them under Section 28 (4) of the Customs Act, 1962 along with interest in terms of Section 28AA of the Customs Act, 1962.
- (c) The goods viz. Waksol A/ Waksol 9-11A/ Waksol 9-11/Waksol C 9-11A etc. total Quantity and Value as per respective row/column of Table-II of the Supplementary Show Cause Notice, should not be confiscated under the provisions of Section 111(j) and 111 (m) of the Customs Act, 1962. Since the same are not physically available for confiscation, why Redemption Fine should not be imposed upon them under Section 125 of the Customs Act, 1962;

(d) Penalty should not be imposed on them under Section 112(a) & (b) /114A and Section 114AA and of the Customs Act, 1962.

Table-7

| Sr. No. | Name of the importer/Notice e | Qty. of subject goods imported at Kandla port (MT) | Declared Value of subject goods (Rs.) imported at Kandla port (Rs.) | Qty. of subject goods imported at Hazira port (Rs.) | Declared Value of subject goods(Rs.) imported at Hazira port | Differential Duty for import at Kandla | Differentia l Duty for import at Hazira | Total Differential Duty (Rs.) |
|---------|--|--|---|---|--|--|---|-------------------------------|
| 1 | M/s. Agarwal Chemicals | 487.620 | 21619915 | 1200 | 31845760 | 1434033 | 1381583 | 2815616 |
| 2 | M/s. Ajanta Chemical Industries | 0 | 0 | 55 | 1458629 | 0 | 63280 | 63280 |
| 3 | M/s. Alwar Paraffin & Allied Products Pvt. Ltd. | 936.298 | 38568341 | 331 | 8621398 | 1608410 | 374027 | 1982437 |
| 4 | M/s. Amit Plasticizers | 256.197 | 11781123 | 81 | 2141731 | 477459 | 92916 | 570375 |
| 5 | M/s. B.G. Chemicals | 40 | 2297750 | 0 | 0 | 86151 | 0 | 86151 |
| 6 | M/s. Balaji Plasticizers & Chemicals Prop. Balaji Pipe Industries (P) Ltd. | 40 | 1105344 | 54 | 1445250 | 47953 | 62700 | 110653 |
| 7 | M/s. Budhiraja Polymers (P) Ltd. | 0 | 0 | 150 | 3850070 | 0 | 167030 | 167030 |
| 8 | M/s. Chloro Paraffin Industries | 179.5 | 5899451 | 107 | 2814323 | 255938 | 122095 | 378033 |
| 9 | M/s. Competent Polymers (P) Ltd. | 0 | 0 | 150 | 3901860 | 0 | 169277 | 169277 |
| 10 | M/s. Flowtech Chemicals Private Ltd. | 506 | 15787324 | 365 | 9517443 | 684910 | 412900 | 1097810 |
| 11 | M/s. Gangotri Chlorochem (P) Ltd. | 80 | 4045151 | 54 | 1445250 | 175493 | 62700 | 238193 |
| 12 | M/s. Grasim Industries Ltd. | 200 | 7048033 | 0 | 0 | 305769 | 0 | 305769 |
| 13 | M/s. Haryana Chemicals | 0 | 0 | 54 | 1445250 | 0 | 62700 | 62700 |
| 14 | M/s. Himchem Enterprises | 0 | 0 | 100 | 2652053 | 0 | 115056 | 115056 |
| 15 | M/s. Kutch Chemical Industries Ltd. | 5872.218 | 234018347 | 0 | 0 | 23567848 | 0 | 23567848 |
| 16 | M/s. K.G. Industries | 0 | 0 | 392 | 10280472 | 0 | 446004 | 446004 |
| 17 | M/s. Madan Chemicals Pvt. Ltd. | 100 | 3663194 | 238 | 6262530 | 158922 | 271691 | 430613 |
| 18 | M/s. Orient Micro Abrasive Limited | 560.287 | 22847478 | 175 | 4573668 | 991205 | 198423 | 1189628 |
| 19 | M/s. Prayag Chemicals Pvt. | 21 | 587989 | 82 | 2150675 | 25509 | 93304 | 118813 |

| | | | | | | | | |
|----|---|--------|-----------|---------|-----------|----------|---------|----------|
| | Ltd. | | | | | | | |
| 20 | M/s. R.K. Chemicals | 40 | 2112334 | 87.785 | 2280926 | 91640 | 98955 | 190595 |
| 21 | M/s. Sapphire Industrial Products Pvt. Ltd. | 85.911 | 3097107 | 165 | 4242601 | 134364 | 184059 | 318423 |
| 22 | M/s. Shanti Chemicals | 670 | 29337129 | 127.873 | 3320353 | 1215389 | 144049 | 1359438 |
| 23 | M/s. Shiva Exim Enterprises | 260.5 | 7961913 | 103 | 2743539 | 345416 | 119024 | 464440 |
| 24 | M/s. Shivtek Industries Private Limited | 234 | 9249624 | 0 | 0 | 401281 | 0 | 401281 |
| 25 | M/s. Standard Chemicals | 45 | 1286398 | 240 | 6301886 | 55808 | 273399 | 329207 |
| 26 | M/s. Sunil Kumar Nenwani | 0 | 0 | 753 | 19787583 | 0 | 858455 | 858455 |
| 27 | M/s. Swastik Plasticizer & PVC Pipes Indore Pvt. Ltd. | 156 | 5411697 | 142 | 3733935 | 234779 | 161991 | 396770 |
| 28 | M/s. V.M.A. Enterprises (P) Ltd. | 160 | 4589859 | 0 | 0 | 199125 | 0 | 199125 |
| 29 | M/s. V.S. Polymers Pvt. Ltd. | 41 | 1147978 | 86 | 2230773 | 49803 | 96780 | 146583 |
| | Total | 10972 | 433463479 | 5292.7 | 139047958 | 32547205 | 6032398 | 38579603 |

29.2 M/s. IMC Ltd., Near IOC Foreshore, Terminals, Opp.- Shirva Railway Crossing New Kandla-370210 were called upon to show cause in writing to the Adjudicating Authorities mentioned in the above Table-5 as to why penalty should not be imposed on them under Sections 73A(3), 112(a) & 112(b) of Customs Act, 1962.

29.3 M/s. Sasol (South Africa)Pty. Ltd., South Africa, PO Box No. 1, Sasolburg, 1947, South Africa were called upon to show cause in writing to the Adjudicating Authorities mentioned in the Table-5 above as to why penalty should not be imposed on them under Section 112(a), 112(b) & 114AA of Indian Customs Act, 1962.

29.4 Shri Shivlal Goyal and Shri K.C. Goyal both Directors of M/s. PIIPLwere called upon to show cause, in writing, to the respective jurisdictional Adjudicating Authorities mentioned in the Table-5above with respect to contraventions pertaining to Bills of Entry referred to in Annexure- B, as to why penalty should not be imposed upon them separately under each of the provisions Section 112(a), 112(b), Section 114AA and Section 117 of the Customs Act, 1962 for their role as reflected above.

29.5 M/s. Rishi Kiran Roadlines, Gandhidham and **M/s. Rishi Kiran Logistics Pvt. Ltd., Gandhidham,** Customs House Agents/ Customs Brokers

were called upon to show cause to the to the respective jurisdictional Adjudicating Authorities mentioned in the Table-5above, as to why penalty should not be imposed upon them separately under each of the provisions Section 112(a), 112(b), Section 114AA and Section 117 of the Customs Act, 1962 for their role as reflected above.

30. The SCN(s) were answerable to the Principal Commissioner/ Commissioner of Customs, Custom House, Ahmedabad and Principal Commissioner/ Commissioner of Customs, Custom House, Kandla.

30.1 The CBIC, vide Notification No.19/2020-Customs (NT/CAA/DRI) dated 03.03.2020, read with Notification No.24/2020-Customs (NT/CAA/DRI) dated 21.05.2020, had appointed the Principal Commissioner/Commissioner of Customs, Custom House, Kandla as Common Adjudicating Authority to adjudicate the Show Cause Notice along with Supplementary Show Cause Notice.

31. The Adjudicating authority vide OIO No. KND-CUSTM-000-COM-15-20-21 dated 04.02.2021 rejected the classification of subject goods under CTH 27101990 and ordered to re-classify the goods under CTH 34052000. The Adjudicating authority confirmed the demand of differential duty of Rs. 7,93,41,037/- under Section 28(4) of Customs Act, 1962. The Adjudicating authority held the goods liable for confiscation and also gave them an option of redeeming the goods on payment of redemption fine in lieu of confiscation. The Adjudicating authority also imposed penalty under various sections as proposed in the notice.

32. Being aggrieved by the OIO dated 04.02.2021, out of the 36 noticees, 34 noticees filed an appeal before the Hon'ble CESTAT, Ahmedabad, which vide Order no. A/10806-10839/2023 dated 06.04.2023 remanded the matter back to the original Adjudicating authority to determine the exact nature and usage of the product imported in order to classify the goods.

PERSONAL HEARING

33. Shri Jayant Kumar, Learned Advocate attended virtual personal hearing on 07.12.2023 on behalf of all 34 noticees. He submitted that for classification under CTH 2710 the product must contain by weight 70% or more of petroleum oils or oils obtained from bituminous minerals and there is no definition of oil or oil content either in the Customs tariff or in the HSN explanatory notes. It is the test reports specifically by CRCL New Delhi started showing Oil content lesser than 70% by treating paraffins of C-18 & below as Oil and above C-18 as non-Oil.

He further submitted that the imported product was an industrial raw material and cannot be classified under CTH 3405 as CTH 3405 covers finished products which are often put up for retail sale. He further submitted that the fact had also been submitted before Tribunal and he also added that their products was sold to the manufacturers and not to the traders, which established that their product was not the finished product and therefore should not be classified under CTH 3405 or 3404.

He also submitted that the imported product was obtained from a synthetic route by Fischer Tropsch process and HSN of CTH 3404 specifically states that Fischer-Tropsch waxes will fall under CTH 2712. He submitted that the imported product was correctly classified under Tariff Entry 2712 90 30 as slack wax and if not as slack wax then under tariff entry 2712 90 40 as Paraffin Wax.

In support of this, he cited some case laws.

He also submitted that the issue is of classification of an imported product which is an issue of interpretation and therefore, in any case, extended period of limitation cannot be invoked in the present case. Consequently, no penalty can be imposed on the noticees.

WRITTEN SUBMISSION-

34. Submission dated 23.02.2024 of M/s. PIPL and other noticees (Ex-Bonders):-

1. In the present case, the Department has alleged that the imported products must be classified under tariff entry 34052000. The imported product even remotely does not fit into the description of a product specified under CTH 3405 and without any basis the classification of the imported product has been dragged into CTH 3405 by the department.
2. The imported product not in any way used in the manufacture of goods of CTH 3405, let alone fitting into the description of CTH 3405.
3. Due to the departmental stand of a different classification of the imported product an allegation has been made that the noticee has short paid the applicable customs duty and other allied duties/taxes by way of misclassifying the imported products.
4. It is submitted that the department has got imported product tested with various laboratories viz. Customs House Laboratory, Kandla and CRCL, New Delhi and could not ascertain the classification of imported product. CRCL New Delhi was unable to answer the queries raised by the department and stated that the sample under reference may be forwarded

to Indian Institute of Petroleum, Dehradun. Finally in the year 2019 they have requested the Joint Director, Customs House Laboratory, Kandla to give his opinion on classification of the imported product. The Joint Director, Kandla has given his opinion that the classification of the imported product shall fall under CTH 3405 based on a reasoning which is totally misconstrued. Based on the opinion the department has concluded that the imported product shall fall under tariff entry 3405 20 00 as “Polishes, creams and similar preparations for the maintenance of wooden furniture, floors or other wood work” without conducting any test for polishes or looking into the fact that the imported product has no use as polishes of wooden furniture or wood work rather it is used in the manufacture of “chlorinated paraffin” which in turn used for the manufacture of PVC industries, shoe industries, and polymer industries etc.

5. Being aggrieved by the Order of Adjudication, the Noticees and other Co-Noticees filed appeal before the Hon’ble CESTAT, Ahmedabad. The Hon’ble Tribunal vide **Final Order No. A/10806-10839/2023 dated 06.04.2023** allowed all the appeals by way of remand with specific direction to determine the exact nature and usage of the imported product and while doing so the rival claims shall be considered including that of chapter 2712, by not getting influenced in any way by the classification indicated by the chemical analyst. The findings of the Hon’ble Tribunal is given in para Paragraph 27 & 28 of the Final Order which is reproduced below:

*“27 We have gone through the rival submissions as well as various case law relied upon by the appellant as well as department. We find that the appellants initially claimed goods under Tariff Heading 2710 as classification of the product in their Bills of Entry, but after being confronted with various evidence during investigation by DRI made alternate submissions for the product to be appropriately classified under Tariff Heading 2712, on the ground that the product cannot be classified under Tariff Heading 3405. We find that TH 3405, pertains to various end products and excludes waxes of heading 3404. **Also the product is an Industrial Raw Material for manufacturer of another Industrial Raw Material i.e. Chlorinated Paraffin Wax and cannot be covered under Tariff Heading 3405 and that even explanatory notes to CTH 3405 (2017 edition) as well as the finding of the learned adjudicating authority, in para 45.2 point to the effect that Waksol 911-A, Waksol 911-B, is not exclusively used for Chlorination and can also be used for other purposes like Polishes, cream and similar preparations for the maintenance of wooden furniture, floors for other wooden work.** The findings therefore only show the possibility and do not conclusively decide the nature of the product or its classification as the product literature and material on record*

shows that Waksol products are used in Chlorination and therefore do not appears in the nature of product of Tariff Heading 3045. **We find that simply some alternate usage existing of the product or the possibility of their being used as such, will not make the product of the nature specified in Tariff Heading 3405 specifically when product used and specified in Tariff Heading 3405 are in the nature of end products and not in the nature of raw-materials.** The department has to conclusively bring on record the predominant usage of the product with evidence to discharge burden of classification. Further, in view of the trite law, learned adjudicating authority should have given his own findings on the classification sought and not relied on one given by the Chemical analyst. To justify classification under 3405 department will need to show that the product imported was not essentially in the nature of intermediate product or raw material and was not, often „Put up for retail sale“ as is the requirement laid down in HSN explanatory notes to CTH 3405 (2017 edition referred). **The argument of the appellant that classification under chapter 3404 cannot be justified as the Fisher/Tropsch Technology was used and which excluded its classification under 3404 is a mutually accepted position and needs no discussion from us.”**

28 We are, therefore, of the view that a detailed examination about the nature of product, its usage and its proper classification based upon exclusion clauses of HSN explanatory note is warranted including of consideration of chapter 2712. In view of claim of product being in the nature of Slag wax, same needs elaborate discussion and findings from the authority below. **The decisive usage required to be established by the department has to be predominant or common usage and not merely based on possibility as laid down by the apex court in 1996 (87) ELT 584 (S.C.) in CCE Vs. Hico Products (P) Ltd.** We, therefore, allow the appeal by way of remand directing the adjudicating authority to determine the exact nature and usage of the product imported. **While doing so, the rival claims shall be considered including that of chapter 2712, by not getting influenced in any way by the classification indicated by the chemical analyst.** If reliance is placed on HSN explanatory notes, the same should be contemporaneous to the period of import and not of any earlier or later edition. It is expected that proper referencing specifically of edition of HSN explanatory note should be done by the adjudicating authority. The question of penalties on various appellants who are part of the bunch are also likewise kept open and remanded to be consequent upon the outcome of classification decision and respective involvement. Appeals are allowed by way of remand with expectation to pass the decision in 3 months, considering the vintage of the dispute.

6. From the order of the Hon'ble Tribunal following can be inferred:

- a. CTH 3405 pertains to various end products and excludes waxes of heading 3404. The product is an industrial raw material for manufacture of another industrial raw material i.e., chlorinated paraffin wax and cannot be covered under CTH 3405.
- b. The usage of the product as polishes and creams only show the possibility and do not conclusively decide the nature of the product or its classification as the product literature and material on record shows that Waksol products are used in Chlorination and therefore do not appears in the nature of product of Tariff Heading 3405 and simply some alternate usage existing of the product or the possibility of their being used as such, will not make the product of the nature specified in Tariff Heading 3405 specifically when product used and specified in Tariff Heading 3405 are in the nature of end products and not in the nature of raw-materials and the predominant usage of the product has to be seen.
- c. classification under chapter 3404 cannot be justified as the Fisher/Tropsch Technology was used and which excluded its classification under 3404 is a mutually accepted position and need no discussion.
- d. The decisive usage required to be established by the department has to be predominant or common usage and not merely based on possibility.
- e. the nature of product, its usage and its proper classification based upon exclusion clauses of HSN explanatory note is warranted including of consideration of chapter 2712 by not getting influenced in any way by the classification indicated by the chemical analyst.

A. Description of the Imported Product

Manufacturing process:

7. The imported product is Waksol series of products. The **manufacturing process** of the imported product as explained by the supplier is given below:
 - a. Natural Gas is reformed into synthesis gas.
 - b. Thereafter this synthesis gas is fed into Fisher Tropsch Synthetic reactors.
 - c. By using an iron catalyst during the Fisher Tropsch process, the synthesis gas is converted into hydrocarbons (and water).
 - d. A primary separation process separates the synthesis products into the following:
 - i. Water
 - ii. Condensates (mainly hydrocarbons C3-C20)

- iii. Hydrocarbons >C20
- iv. Tail gas (Synthesis gas and C1-C3 Hydrocarbons)
- e. **Thereafter, these condensates & hydrocarbons are distilled to get Waksol grade of products.** To be specific, the condensates are distilled to remove any wax and then hydrogenated to remove unsaturation and small amount of oxygenates present in the condensate. It is further distilled to produce a number of paraffinic products from C5-C20 which includes:
 - i. C9-C11 n-paraffin,
 - ii. C10-C13 n-paraffin,
 - iii. C14-C20 n-paraffin
- f. The hydrocarbons greater than C20 is distilled into a number of fractions, the lightest being **Waksol-A** (C16-C22 range)
- g. Now, for example, Waksol A and C9-C11 n-paraffin are blended in a proprietary ratio to produce **Waksol 9-11A** which is liquid at room temperature (20 degree centigrade)

Uses of the imported product:

8. It is submitted that the Waksol grade of products is an industrial raw material used in the manufacture of another industrial raw material i.e., chlorinated paraffin which is further used in the PVC industries, shoe industries, polymer industries and wire and PVC pipe industries and marine paint industries etc.
9. The import manager Shri Vishnu P. Naykar in his statement dated 24.08.2015 which has been mentioned at para 16.1 has specifically stated as follows:

“.....the end use of Waksol A, Waksol B and C9-C11 were for manufacturing of chlorinated paraffin which was used in PVC industries, shoe industries, polymer industries and wire and PVC pipe industries and marine paint industries etc.”

10. In para 16.3 of the SCN, the statement of Krishna Kumar, Director of Apratim International is referred and he stated that the imported products were supplied to Chlorination Industry for manufacturing of CPW (Chlorinated Paraffin Wax). Further, it is also noted that M/s Sasol South Africa used Gas to Liquid technology by Fischer Tropsch process to manufacture Waksol-A and C-9-C11 and that the product is obtained by blending Waksol A and C-9 -C11 having Waksol A as 70% to 80% and C9-C11 20% to 30%. Extract of the relevant paragraph is reproduced below:
11. In paragraph 16.4 and 16.5 of the SCN, statement of Mohammad Jamalbhai Aglodia, Technical Advisor of Noticee Company and Statement of Shivalal Goyal, Director of Noticee Company is referred wherein it has been stated that the imported goods were used only for producing chlorinated paraffin wax/oil (CPW) for use as raw material in various industries.

12. Further, in para 21.1 of the SCN also it has been noted that as follows:

“.....the product Waksol 9-11A and Waksol 9-11B are admittedly used in manufacturing of Chlorinated paraffin which is used in PVC/PVC pipe/rubber pipes industries, Shoe industries, Oil Paint, Marine paint industries, polymer industries, polish, lubricant additives etc. as stated by Shri KC Goyal, Director, M/s PIPL, Shri

On being asked how did they gather information from new Indian customer, Shri Krishan Kumar informed that sometimes they called for printed literature about product from plant of importer, sometimes they gathered information from importer by mail and sometimes they also asked the competitors about the chlorination plant of the importer. He further informed the names of the products of M/s. Sasol, export of which, was facilitated by them into India as C9-C11 (brand name KOGASOL), C14-C20, C10-13, WAKSOL A, WAKSOL B, WAKSOL 9-11 A and WAKSOL 9-11 B. He also provided copy of their agreement with SASOL, South Africa and letter dated 15.01.2015 of SASOL explaining manufacturing process of products viz WAKSOL A, WAKSOL 9 -11 A etc. Shri Krishan Kumar also explained the composition, manufacturing, Characteristics and applications of the products of M/s. Sasol including WAKSOL 9-11 A and WAKSOL 9-11 B etc. stating that all these products were supplied to Chlorination Industry for manufacturing CPW (Chlorinated Paraffin waxes); that WAKSOL A was mainly composed of C18-C26 Paraffins and C9-C11 was n-paraffin solvent having carbon chain of 9 to 11 carbon atoms; that M/s. Sasol used Gas to Liquid technology by Fischer Tropsch process to manufacture Waksol-A and C9-C11. He also informed that the product Waksol 9-11A is obtained by blending WAKSOL A and C9-C11 in the ratio (having WAKSOL A 70 % to 80% and C9-C11 20 % to 30%.

Vishnu P. Naykar, Manager (Import) and Shri Mohammad Jamalbhai Angolia, Technical Adviser.....”

13. So, the imported product has a specific use that i.e., for use in the manufacture of “chlorinated paraffin”.

B. Classification of the Imported Product (Waksol series)

14. It is submitted that the noticee has classified the imported products under CTH 2710. During the course of investigation, the department has dragged the classification under Chapter 3405. In case of other importers, the

department is dragging the classification of Waksol grade of products under CTH 3404 also. In the present case of the noticee also, the queries sent to the testing agencies were also with the respect of parameters of classification given under HSN explanatory notes to CTH 3404. Further, the Joint Director Customs House Laboratory has also given his opinion regarding classification under CTH 2712. Therefore, in the present case there are four competing headings for the classification of Waksol grade of products which is mentioned below:

| CTH | CTH Description | Remarks | Held by Hon’ble Tribunal |
|------|---|---|--|
| 2710 | Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils | Goods cleared under this CTH bynoticees. | To be considered by the adjudicating Authority |
| 2712 | Petroleum jelly, paraffin wax, microcrystalline petroleum wax, slack wax, ozokerite, lignite wax, peat wax, other mineral waxes, and similar products obtained by synthesis or by other processes, whether or not coloured | If not 2710 then correct CTH would be 2712 | To be considered by the adjudicating Authorityspecially asslack wax. |
| 3404 | Artificial waxes and prepared waxes | Initially department wanted to classify under this CTH. | Cannot be classified here |
| 3405 | Polishes and creams, for footwear, furniture, floors, coachwork, glass or metal, scouring pastes and powders and similar preparations (whether or not in the form of paper, wadding, felt, nonwovens, cellular plastics or cellular rubber, impregnated, coated or covered with such preparations), excluding waxes of heading 3404 | CTH alleged by the department in the SCN and was confirmed in the Impugned OIO dated 03.02.2021 | Cannot be classified here. |

Classification under CTH 2710:

15. For Classification under CTH 2710 the product must contain by weight 70% or more of petroleum oils or oils obtained from bituminous minerals. CTH 2710 is reproduced below for the sake of reference:

| Tariff Item | Description of article |
|-------------|---|
| 2710 | Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations ; waste oils |
| | <i>- Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than those containing bio-diesel and other than waste oils.</i> |
| 2710 12 | -- <i>Light Oils and preparations :</i> |
| | --- <i>Motor Spirit :</i> |
| 2710 12 11 | ---- Special boiling point spirits (other than benzene, toluol) with nominal boiling point range 55-115'C |
| 2710 12 12 | ---- Special boiling point spirits (other than benzene, benzol, toluene and toluol) with nominal boiling point range 63-70'C |
| 2710 12 13 | ---- Other special boiling point spirits (other than benzene, benzol, toluene and toluol) |
| 2710 12 19 | ---- Other |
| 2710 12 20 | --- Natural gasoline liquid (NGL) |
| 2710 12 90 | --- Other |
| 2710 19 | -- <i>Other :</i> |
| 2710 19 10 | --- Superior kerosene oil (SKO) |
| 2710 19 20 | --- Aviation turbine fuel (ATF) |
| 2710 19 30 | --- High speed diesel (HSD) |
| 2710 19 40 | --- Light diesel oil (LDO) |
| 2710 19 50 | --- Fuel oil |
| 2710 19 60 | --- Base oil |
| 2710 19 70 | --- Jute batching oil and textile oil |
| 2710 19 80 | --- Lubricating oil |

| | |
|------------|--|
| 2710 19 90 | --- Other |
| 2710 20 00 | - Petroleum Oils and Oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, containing biodiesel, other than waste oils |
| | - <i>Waste oil</i> : |
| 2710 91 00 | -- Containing polychlorinated biphenyls (PCBs), polychlorinated terphenyls (PCTs) or polybrominated biphenyls (PBBs) |
| 2710 99 00 | -- Other |

16. It is submitted that the noticee was classifying the imported product under CTH 2710 because of the following:

- i. The product in question is in liquid form at room temperature and from a visual inspection it is similar to any other petroleum oil. The product is being imported since many years and in the certificate of Analysis received from the supplier there was no mention of Oil content as such. Sample was drawn many times and was sent to custom laboratory for testing. Custom Laboratories did not raise any objection with respect to oil content or classification etc. and the classification was accepted all the time under CTH 2710.
- ii. When the current investigation started it was emphasized that to fall under CTH 2710, Oil content should be more than 70%. **It should be noted that there is no definition of oil or oil content either in the Customs tariff or in the HSN explanatory notes** and thus, what is meant by oil has to be decided by popular perception. As per popular perception the product in question is to be treated as Oil because of its liquid form in which no wax can be seen. Noticees always believed that product being liquid in nature and 100% composed of Hydro Carbons which are paraffinic in nature is made of 100% oil.
- iii. When the investigation started, initially labs could not comment on oil content, but later on new set of test reports specifically by CRCL New Delhi started showing Oil content lesser than 70% by treating paraffins of C-18 & below as Oil and above C-18 as

non-Oil. There is no basis for choosing this cut off of C-18 under the law. Thus if, this basis is not accepted under the law, still the product is classifiable under CTH 2710. But in case, this cut off basis of C-18 adopted by CRCL, New Delhi is accepted as an understanding of oil by the scientific community, then the product will fall under CTH 2712 where duty remains the same. By no stretch of imagination, the product can be taken to Chapter 34.

Classification under CTH 2712:

17. The imported product **is obtained from a synthetic route by Fischer Tropsch process where starting material is natural gas, reformed into synthesis gas which is further distilled to get paraffinic hydrocarbons**.
The imported product is mixture / preparation of paraffinic hydrocarbons.
18. Waksol 9-11A which has been imported by the noticee is a mixture of (i) N paraffin below C18 which is the oil content as per the CRCL, New Delhi and (ii) N paraffin above C18 which is Wax content. So, the product is composed of 100% paraffin of different molecular weight and will be classified under Chapter 27 with most appropriate CTH 2712.
19. CTH 2712 specifically covers all type of paraffin waxes irrespective of their oil content, Fischer-Tropsch waxes etc. CTH 2712 of the Customs Tariff Act, 1975 is reproduced below:

| Tariff Item | Description of article |
|-------------|---|
| 2712 | Petroleum jelly, paraffin wax, microcrystalline petroleum wax, slack wax, ozokerite, lignite wax, peat wax, other mineral waxes, and similar products obtained by synthesis or by other processes, whether or not coloured |
| 2712 10 | - Petroleum jelly : |
| 2712 10 10 | --- Crude |
| 2712 10 90 | --- Other |
| 2712 20 00 | - Paraffin wax containing by weight less than 0.75% of oil |
| 2712 90 | - Other : |
| 2712 90 10 | --- Micro-crystalline petroleum wax |
| 2712 90 20 | --- Lignite wax |

| | |
|------------|--|
| 2712 90 30 | --- Slack wax |
| 2712 90 40 | --- Paraffin wax containing by weight 0.75% or more of oil |
| 2712 90 90 | --- Other |

20. Chapter note 5 of Chapter 34, while dealing with CTH 3404 makes it clear that product in question shall be covered under CTH 2712. Artificial waxes and prepared waxes are classified under CTH 3404. The chapter note 5 of Chapter 34 states that CTH 3404 does not apply to mineral waxes and similar products of heading 2712 whether or not intermixed. Chapter note 5 is reproduced below for reference:

5. In heading 3404, subject to the exclusions provided below, the expression “artificial waxes and prepared waxes” applies only to:

(a) chemically produced organic products of a waxy character, whether or not water-soluble;

(b) products obtained by mixing different waxes;

(c) products of a waxy character with a basis of one or more waxes and containing fats, resins, mineral substances or other materials, the heading does not apply to:

(i) products of headings 1516, 3402 or 3823, even if having a waxy character;

(ii) unmixed animal waxes or unmixed vegetable waxes, whether or not refined or coloured, of heading 1521;

(iii) mineral waxes and similar products of heading 2712 whether or not intermixed or merely coloured; or

(iv) waxes mixed with, dispersed in or dissolved in a liquid medium (headings 3405, 3809, etc.).

21. Further the HSN explanatory to CTH 3404 states that synthetically produced waxes like Fischer-Tropsch waxes consisting essentially of hydrocarbons are excluded from CTH 3404 and will fall under CTH 2712. The relevant extract of HSN explanatory notes to CTH 3404 is reproduced below:

This heading covers artificial waxes (sometimes known in industry as “synthetic waxes”) and prepared waxes, as defined in Note 5 to this Chapter, which consist of or contain relatively high molecular weight organic substances and which are not separate chemically defined compounds. These waxes are :

*(A) Chemically produced organic products of a waxy character, whether or not water-soluble. **Waxes of heading 27.12, produced synthetically or otherwise (e.g., Fischer-Tropsch waxes consisting essentially of hydrocarbons) are,***

however, excluded. Water-soluble waxy products having surface-active properties are also excluded (heading 34.02).

(B)

(C)

22. HSN explanatory notes to CTH 2712 needs to be seen in above context, which reads as under.

(A) Petroleum jelly.

Petroleum jelly is unctuous to the touch. It is white, yellowish or dark brown in colour. It is obtained from the residues of the distillation of certain crude petroleum oils or by mixing fairly high viscosity petroleum oils with such residues or by mixing paraffin wax or ceresine with a sufficiently refined mineral oil. The heading includes the jelly, whether crude (sometimes called petrolatum), decolourised or refined. It also covers petroleum jelly obtained by synthesis.

To fall in this heading petroleum jelly must have a congealing point, as determined by the rotating thermometer method (ISO 2207 equivalent to the ASTM D 938 method), of not less than 30 °C, a density at 70 °C of less than 0.942 g/cm³, a Worked Cone Penetration at 25 °C, as determined by the ISO 2137 method (equivalent to the ASTM D 217 method), of less than 350, a Cone Penetration at 25 °C, as determined by the ISO 2137 method (equivalent to the ASTM D 937 method), of not less than 80.

This heading does not, however, include petroleum jelly, suitable for use for the care of the skin, put up in packings of a kind sold by retail for such use (heading 33.04).

(B) Paraffin wax, microcrystalline petroleum wax, slack wax, ozokerite, lignite wax, peat wax, other mineral waxes, and similar products obtained by synthesis or by other processes, whether or not coloured.

Paraffin wax is a hydrocarbon wax extracted from certain distillates of petroleum oils or of oils obtained from shale or other bituminous minerals. This wax is translucent, white or yellowish in colour and has a relatively marked crystalline structure.

Microcrystalline petroleum wax is also a hydrocarbon wax. It is extracted from petroleum residues or from vacuum-distilled lubricating oil fractions. It is more opaque than paraffin wax and has a finer and less apparent crystalline structure. Normally it has

a higher melting point than paraffin wax. It can vary from soft and plastic to hard and brittle and from dark brown to white in colour.

Ozokerite is a natural mineral wax. When purified it is known as ceresine.

Lignite (or Montan) wax and the product known as “Montan pitch” are ester waxes extracted from lignite. They are hard and dark when crude, but may be white when refined.

Peat wax is physically and chemically similar to lignite wax, but is slightly softer.

The other mineral waxes of this heading (slack wax and scale wax) result from the de-waxing of lubricating oils. They are less refined and have a higher oil content than paraffin wax. Their colour varies from white to light brown.

The heading also includes products similar to those referred to in the heading and obtained by synthesis or by any other process (e.g., synthetic paraffin wax and synthetic microcrystalline wax). However, the heading does not include high polymer waxes such as polyethylene wax. These fall in heading 34.04.

All these waxes are covered by the heading whether crude or refined, mixed together or coloured. They are used for making candles (especially paraffin wax), polishes, etc., for insulating, dressing textiles, impregnating matches, protection against rust, etc.

However, the following products are classified in heading 34.04 :

(a) Artificial waxes obtained by the chemical modification of lignite wax or other mineral waxes.

(b) Mixtures, not emulsified or containing solvents, consisting of :

(i) Waxes of this heading mixed with animal waxes (including spermaceti), vegetable waxes or artificial waxes.

(ii) Waxes of this heading mixed with fats, resins, mineral substances or other materials, provided they have a waxy character.

23. Revenue has referred to congealing point under Petroleum jelly category(A) of HSN, which was never claimed by us, for seeking exclusion from CTH 2712. Noticee has claimed category(B) of HSN i.e., Paraffin wax/slack wax to be covered under CTH 2712.

24. It is submitted that Waksol is correctly classified under Tariff Entry 2712 90 30 in view of the following:

- i. It is obtained from a synthetic route by Fischer Tropsch process where starting material is natural gas, reformed into synthesis gas. After the Fischer Tropsch process, the synthetic gas is distilled to get paraffinic hydrocarbons. In paraffin wax of 2712, the oil content is generally lower and paraffin waxes with higher oil content are generally covered as slack wax. Thus, the imported product on account of relatively higher oil content, more appropriately fits into the definition of slack wax compared to paraffin wax.
- ii. HSN explanatory notes to CTH 3404 at para (A) clarifies the position as to classification of a product having produced synthetically through Fischer Tropsch Process. It says '*Waxes of Heading 27.12, produced synthetically or otherwise (e.g., Fischer-Tropsch waxes consisting essentially of hydrocarbons) are, however, excluded.*'. HSN of 3404 specifically states that Fischer-Tropsch waxes will fall under 2712.
- iii. Tariff Entry 2712 90 30 specifically covers slack wax and Tariff Entry 2712 90 40 specifically covers Paraffin wax. The product WAKSOL 9-11A in question being a proprietary blend of Waksol A and C9-11n-paraffin, which derives its essential characteristics from Waksol and on account of its higher oil content qualifies to be slack wax, and more appropriately fall under CTH 2712 90 30 by applying Rule 3(a) and 3(b) of General Rules of Interpretation. If for any reason it is not accepted as Slack wax, then it will fall under Tariff entry 2712 90 40 as Paraffin wax where there is no upper limit for oil content and thus it can go up to 70%. Beyond 70% oil content will take the product in CTH 2710.
- iv. the foreign supplier M/s Sasol, South Africa has specifically stated the manufacturing process of Waksol A is through Fischer Tropsch Process which is also referred in para 15.1 of the SCN. The supplier has filed the declaration with South African Customs where the product is classified under tariff entry "2712 90 50 7" and described as "other slack wax".

Classification by foreign Supplier

25. In RUD 28 to this SCN, e-mail correspondence of Shri Vishnu P. Naykar (import manager of the noticee) is enclosed where he has requested to Mr. Apratim Kumar, General Manager-Marketing, Apratim International Pvt. Ltd. regarding classification of Waksol 9-11A from South Africa along with

declaration / documents issued by south African customs authority or government agency declaring HSN classification of Waksol 9-11A.

26. Mr. Apratim Kumar replied through mail and also stated that the HSN classification used by the South Africa customs is 2712 90 50 7 along with declaration of supplier with South African customs. The declaration by supplier with South African Customs where the product is classified under tariff entry “2712 90 50 7” and described as “**other slack wax**” is enclosed herewith as Annexure.

Circular issued by the Department:

27. The Department has issued various circulars for clarification regarding Forwarding of samples for testing to the Outside Laboratories. In the tables referred to these circulars, the details of samples of a particular product, its chapter under Customs Tariff Act and suggested laboratories have been mentioned. In these circular the department has specifically referred to Waksol 9-11A grade products and stated chapter 27 for these products. The relevant part of various circulars which suggest the classification of chapter 27 for Waksol 9-11A grade is reproduced below:

Circular: 43/2017-Cus. dated 16-Nov-2017

Subject: Forwarding of samples for testing to the Outside Laboratories - Regarding.

.....
.....

Annexure-1

| Sl. No. | Chapter | Samples to be referred | Suggested laboratories |
|---------|---------|-------------------------|------------------------|
| 10. | 27 | 26. Waksol 9-11 A Grade | --- |

Circular: 11/2018-Cus. dated 17-May-2018

Subject: Forwarding of samples for testing to the Outside Laboratories - Regarding..

.....
.....

Annexure-1

| Sl. No. | Chapter | Samples to be referred | Suggested laboratories |
|---------|---------|-------------------------|------------------------|
| 10. | 27 | 19. Waksol 9-11 A Grade | --- |

28. Therefore, the circulars issued by the department also considers Waksol 9-11A Grade a Chapter 27 product.

C. Extended Period of Limitation cannot be invoked

29. In paragraph para 20.1 of SCN it has been alleged by the department that noticee had misdeclared the products by way of mis classification of the imported products. Further, in paragraph 16 of the SCN, it has been alleged that the noticee has deliberately classified the imported goods under wrong chapter.

30. It is pertinent to mention that the allegation put forth by the department regarding willful mis-classification has not been substantiated with any corroborative evidence. **There is no dispute about the description of goods, its quantity or valuation declared by the noticee. The issue is purely of classification of goods as per the provisions of Customs Tariff Act, 1975.**

31. It is submitted that the present case is purely of interpretation regarding classification of the imported goods. The noticee was under bona fide belief that the imported goods are correctly classified under 2710, however, after the objection from the department the noticee revisited the classification and consulted the legal experts who opined that the goods are correctly classified under CTH 2712.**It is to be noted here that classification of a product depends on the Section/Chapter Notes and references to the Heading.**

32. It is pertinent to mention here that there is no dispute regarding the description of goods, quantity and other details declared by the noticee at the time of filing Bill of Entry. The imported goods correspond exactly to declaration in respect of the description and value and there is no discrepancy pointed out by the department. The objection of the department is only with respect to classification of the imported goods. As already been explained in the aforementioned paras the classification suggested by the department w.r.t. to imported goods is also not correct. The correct classification of the imported goods is under CTH 2712 where

there is no implication of any differential duty as applicable duties w.r.t. CTH 2710 and CTH 2712 are same.

33. Assuming for a moment that the goods are to be classified under CTH 3405 (though not admitting) even then extended period of limitation cannot be invoked in the present case. There was no suppression of any fact or any description of the imported goods at the time of filing bill of entries. All the facts regarding the description of the imported products were declared at the time of import. There is not even an allegation in the SCN that the noticee has suppressed any fact as to the description of imported goods. The classification of an imported product is a legal exercise and misclassification of product cannot be equated with mis declaration with an intention to evade payment of duty.

34. It is submitted that the department has invoked extended period of limitation under Section 28(4) of the Customs Act, 1962 which can be invoked only in cases wherein the following ingredients are present: -

- a) Collusion
- b) Any willful mis statement
- c) Suppression of facts

35. In the instant case, none of the above ingredients of Section 28(4) is attracted and therefore invocation of extended period of limitation is arbitrary and un-tenable. For the sake of clarity, the relevant provision is reproduced below:-

“Section 28 (4)- Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, —

- (a) collusion; or*
- (b) any wilful mis-statement; or*
- (c) suppression of facts,”*

36. In the present case the issue is of interpretation of law and its application to decide the correct classification of a particular product. Deciding correct classification by referring to Customs Tariff, general interpretative Rules, Section Notes, Chapter Notes and Headings and subheading etc. is a legal exercise. It is settled law that mis-declaration of imported goods cannot be alleged against importer, when the issue involved is purely of classification or claiming benefit of exemption notification, where subsequently on merit

the declared classification is found to be wrong or claimed benefit of exemption notification is found to be inadmissible. We rely on the following decision of the apex court and Tribunals:

- d) In the case of the **Northern Plastic Ltd. v. Commissioner [1998 (101) E.L.T. 549 (S.C.)]** the Hon'ble Apex Court has held in the following terms:

23. We, therefore, hold that the appellant had not mis declared the imported goods either by making a wrong declaration as regards the classification of the goods or by claiming benefit of the exemption notifications which have been found not applicable to the imported goods. We are also of the view that the declarations in the Bill of Entry were not made with any dishonest intention of evading payment of customs and countervailing duty.

- e) In **O.K. Play (India) Ltd. v. Commissioner [2005 (180) E.L.T. 300 (S.C.)]**,

38. We do not find any merit in these arguments. Nothing prevented the department from calling upon the assessee over the years to produce their catalogues. The classification lists were duly approved by the department from time to time. All the facts were known to the department, whose officers had visited the factory of the assessee on at least 12 occasions. In the circumstances, we do not find any infirmity in the reasoning given by the Tribunal in coming to the conclusion that there was no wilful suppression on the part of the assessee enabling the department to invoke the extended period of limitation under the proviso to Section 11A(1) of the 1944 Act. However, we may clarify that the show cause notices dated 24-6-1997, 27-5-1998, 15-10-1998, 31-3-1998 and 30-9-1999 are in time as held by the Tribunal.

- f) **National Radio & Electronics Co. v. Commissioner [2000 (119) E.L.T. 746]**,

3. We see force in the submissions of the learned Counsel that the demand is entirely barred by limitation. The appellants clearly described the goods in dispute in their classification list as peripherals and

parts for computers and also attached a list of all the peripherals and parts. It is not the case of the Department that the goods did not correspond to the description given in the list. The only ground on which the extended period of limitation has been held to be applicable is that the appellants did not declare the correct nature of the peripherals and parts and their functions, giving an impression that peripherals and parts are automatic data processing unit and, therefore, they had suppressed the fact and misdeclared peripherals and parts for business systems computers as falling under Heading 84.71 which were in fact classifiable under Heading 84.73. We fail to understand how the Department gathered such an impression, in the face of the clear description and details of the various items in dispute. Claiming a classification different from what is ultimately approved by the Department, does not amount to suppression. It is open to an assessee to claim classification under any Heading and it is the responsibility of the Revenue to arrive at the correct classification after examination of full facts. The allegation and finding of suppression and misdeclaration is, therefore, unfounded and unsustainable and we set aside the same. In the result, we set aside the impugned order holding that the demand is entirely barred by limitation and allow the appeal on this ground, without going into the issue of correct classification of the disputed goods.

37. Therefore, the invoking extended period of limitation to demand Duty is not tenable at all.

D. No interest liability under section 28AA of the Customs Act, 1962

38. Since there is no implication of any differential duty liability therefore demand of interest under section 28AA is not sustainable at all.

E. Goods are not liable for confiscation under Section 111(j) and 111(m) of the Customs Act, 1962

39. It has been alleged by the department that the goods are liable for confiscation under section 111(j) and 111(m) of the customs Act. For the sake of brevity section 111(j) and 111(m) is reproduced below:

SECTION 111. Confiscation of improperly imported goods, etc.

.....

(j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

40. It is submitted that the noticee has cleared the goods after filing proper bill of entry and on payment of applicable duties of customs. Further the noticee has declared the correct value of the imported goods. There is no allegation in the SCN that the goods do not corresponds to value declared by the noticees. Therefore, the allegation that the goods are liable for confiscation under section 111(j) and section 111(m) is also not sustainable at all.

41. The noticees relies on the case of **SATRON Versus COMMISSIONER OF CUSTOMS (IMPORTS) JNCH, NHAVA SHEVA 2020 (371) E.L.T. 565 (Tri. - Mumbai)** wherein the Hon'ble Tribunal has held that in absence of any evidence of misdeclaration of description or value of goods, confiscation not sustainable for mere misclassification of goods. The relevant para of the judgment is reproduced below:

5. *It is seen that the impugned order has directed classification of the goods as finished products even though, admittedly, the machines had not been imported in its complete form. Nevertheless, the provisions of Rule 2(a) of General Interpretative Rules for the Schedule in the Customs Tariff Act, 1975 itself deem that the classification of the goods shall be governed by the following principles of which -*

'2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.'

from which, it would appear even though the goods are not presented in the final form for the purpose, rate of duty as finished goods should be applied. It is also not the case of the customs authorities that there has been a misdeclaration of the finished products. The obligation of the importer is fulfilled by declaration of the goods as imported. It is plainly an application of the Interpretation Rules that has altered the classification and rate of duty. In the absence of any evidence of misdeclaration of goods, the confiscation as a consequence of reclassification will not sustain.

42. Reliance is further placed on the case of **SIRTHAI SUPERWARE INDIA LTD. Versus COMM. OF CUSTOMS, NHAVA SHEVA-III 2020 (371) E.L.T. 324 (Tri. - Mumbai)** wherein the Hon'ble Tribunal has held that Fact that the goods correspond to declaration in respect of the description and value is sufficient to take the imported goods away from the application of Sections 111(m) and 111(o) of Customs Act, 1962. Relevant para of the judgment is reproduced below:

4.8 *Sections 111(m) and 111(o) of the Customs Act, 1962 which have been invoked by the Commissioner for holding that the goods are liable for confiscation read as follows :-*

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of Section 54;

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

4.9 *From plain reading of the said clauses of Section 111, we do not find that these sub-clauses, are applicable to cases where the classification of claim of exemption is found to be erroneous. The fact that the goods correspond to declaration in respect of the description and value is sufficient to take the imported goods away from the application of these two clauses. Hence the order holding goods liable for confiscation and imposition of penalty under Section 112(a) cannot be sustained.*

43. The noticees further relies on the case of LEWEK ALTAIR SHIPPING PVT. LTD. Versus COMMISSIONER OF CUS., VIJAYAWADA 2019 (366) E.L.T. 318 (Tri. - Hyd.) wherein the Hon'ble Tribunal has held that Mention of wrong tariff or claiming benefit of an ineligible exemption notification cannot form the basis for confiscation of goods under Section 111(m) of Customs Act, 1962. The relevant para of the judgment is reproduced below:

7. We find that confiscation of vessels under Section 111(m) was only on the ground that the bill of entry claimed under Customs Tariff Heading which, according to the Commissioner, was incorrect. It was therefore held that in the entry made under Customs Act viz.; Bill of Entry, the Customs Tariff Heading was not correct and therefore the goods are liable to be confiscated under Section 111(m). As we have held that the goods in question are classifiable as claimed by the appellant, under CTH 8901 90 00, this allegation does not survive. Even otherwise, we find it hard to hold that an assessee who filed bill of entry with a Customs Tariff Heading which is not correct, will render his goods liable to confiscation under Section 111(m). The Customs Tariff Heading indicated in the Bill of Entry is only a self assessment by the appellant as per his understanding which is subject to re-assessment by the officers if necessary. Therefore, an assessee, not being an expert in the Customs law can claim a wrong tariff or an ineligible exemption notification and such claim does not make his goods liable to confiscation. It is a different matter if the goods have been described wrongly or the value of the goods has been incorrectly declared. In this case, although there was an allegation in the show cause notice that the invoices were initially submitted for a lower value and thereafter were revised for higher amount, the confiscation in the impugned orders were only on the ground that CTH in the bill of entry was incorrect. In our view, this cannot form the basis for confiscation of goods under Section 111(m). Therefore, the confiscations and the redemption fines need to be set aside and we do so. Consequently no penalties are imposable under Section 112(a). As far as the penalties under Section 114AA are concerned, these are imposable if a person knowingly or intentionally makes, signs or uses or causes to be made, signed or used, in a declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purpose of the Customs Act. Ld. Commissioner held "considering the facts of the case, it has to be held that on the ground of wilful misstatement regarding classification and availing of notification, I am constrained to hold that the importer is liable for penalty under Section 114AA of the Customs Act, 1962." Thus holding, he imposed a penalty of Rs. 1.00 crore on the appellant in each of the impugned orders. In our considered view, claiming an incorrect classification or the benefit of an ineligible exemption notification does not amount to making a false or incorrect statement because it is not an incorrect description of the goods

or their value but only a claim made by the assessee. Thus, even if the appellant makes a wrong classification or claims ineligible exemption, he will not be liable to penalty under Section 114AA of the Customs Act, 1962. Further, in these cases, we have already upheld the classification claimed by the appellant and therefore find that no penalty is imposable on the appellant.

44. It is submitted that LEWEK ALTAIR (*Supra*) was further approved by the Hon'ble Supreme Court in Commissioner v. Lewek Altair Shipping Pvt. Ltd. - 2019 (367) E.L.T. A328 (S.C.)]

F. No penalty can be imposed under section 112(a) & (b) of the customs Act

45. In the present case the department has proposed penalty under section 112(a) & (b) of the Act. Section 112(a) & (b) is reproduced below:

SECTION 112. Penalty for improper importation of goods, etc.

— Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,.....

46. It is submitted that for imposition of penalty under 112(a) or (b) of Customs Act following conditions must be fulfilled:

- a) goods must be liable to confiscation under section 111.
- b) the person on whom the penalty is sought to be imposed must have done or omitted to do something, or abetted in performance of an act as a result of which goods became liable to confiscation under section 111.
- c) the person on whom the penalty is sought to be imposed must have dealt with the goods liable to confiscation under section 111.

47. Here in this case, the noticee has not committed any act which would render the goods liable for confiscation. Therefore, there arises no legitimate ground to invoke section 112 and penalty cannot be imposed under section 112 of the Act.

G. No penalty can be imposed under Section 114A of the Customs Act, 1962

48. It is submitted that penalty under Section 114A of the Customs Act, 1962 can be imposed only when there has been instances of short payment or non-payment of duty by reason of collusion or any willful mis-statement or suppression of fact. Herein in the present case, due to change in classification under CTH 2712 there is no implication of any differential duty liability and therefore, the noticee has no intention to evade payment of duty. Further the noticee has not suppressed any fact willfully suppressed nor mis-declared any fact. Extract of the relevant provision is reproduced below:-

SECTION [114A. Penalty for short-levy or non-levy of duty in certain cases. - Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has [xxx] been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined :

*[**Provided** that where such duty or interest, as the case may be, as determined under [sub-section (8) of section 28], and the interest payable thereon under section [28AA], is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined :*

***Provided** further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :*

***Provided** also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account :*

***Provided** also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section [28AA], and twenty-five per cent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect :*

***Provided** also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.*

***Explanation.** - For the removal of doubts, it is hereby declared that -*

- (i) *the provisions of this section shall also apply to cases in which the order determining the duty or interest under [sub-section (8) of section 28] relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;*
- (ii) *any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.]*

49. It is submitted that in the case of **Sirthai Superware India Pvt. Ltd. vs. Commissioner of Customs, Nhava Sheva-III 2020 (371) E.L.T. 324 (Tri. - Mumbai)**, the Hon'ble CESTAT Mumbai held that in cases where description of goods match the actual content of the consignment and if the issue is with respect to classification, penalty cannot be imposed either under Section 112 or 114A of the Customs Act, 1962. Extract of relevant paragraph is reproduced below for the sake of clarity: -

"4.9 From plain reading of the said clauses of Section 111, we do not find that these sub-clauses, are applicable to cases where the classification of claim of exemption is found to be erroneous. The fact that the goods correspond to declaration in respect of the description and value is sufficient to take the imported goods away from the application of these two clauses. Hence the order holding goods liable for confiscation and imposition of penalty under Section 112(a) cannot be sustained.

4.10 Since we have held that appellant had made any misdeclaration with intent to evade payment of duty, we are setting aside the penalty imposed under Section 114A of Customs Act, 1962"

50. It is submitted that the description of the goods corresponds to that of the consignment; the noticee claimed the classification, which they thought to be the correct classification. In the SCN, the Department failed to adduce any evidence to suggest collusion or willful mis statement, and thus in light of the provision as well as Judicial precedents, penalty under Section 114A cannot be imposed on the Noticee. Reliance is placed on the case of **C.C., C. EX. & SERVICE TAX, HYDERABAD-II Versus SANDOR MEDICAIDS PVT. LTD. 2019 (367) E.L.T. 486 (Tri. - Hyd.)**. Extract of the relevant paragraph is reproduced below:-

"9. As far as the limitation is concerned, once the appellant has declared what is being imported in the invoice and the Bill of Entry, they cannot be faulted for claiming a classification which, according to them is correct. Nothing prevented the assessing officer from seeking further literature and information and redetermining the classification if the classification claimed in the Bill of Entry is felt to be incorrect. Clearly, there is no evidence on record that the appellant assessee had misdeclared the nature of goods. Hence the Orders-in-Original Nos. 12/2011-Adj. (Cus. and 2/2012-ACC(R), dated 6-1-2012 failed on this

count also. These impugned orders are set aside with consequential relief to the appellant.”

51. Further Reliance is placed on the case of:-

- a. Surbhit impex p. Ltd. Vs Commissioner of Customs (ep), Mumbai 2012 (283) E.L.T. 556 (Tri. - Mumbai)
- b. International Trade Affairs vs. Commissioner of Customs, Hyderabad 2003 (162) E.L.T. 584 (Tri. - Bang.)

H. No penalty can be imposed under Section 114AA of the Act

52. In the SCN penalty has also been proposed under section 114AA of the Act. Section 114AA is reproduced below:

SECTION 114AA. Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

53. It is submitted that the noticee has not used any false or incorrect material for importing the product in question. Declaration in the form of description of the product value has been disclosed correctly before the department. It is not even an allegation that the noticee has produced incorrect material for importing the products. The only issue in the present case is that of classification. Therefore, the penalty cannot be imposed under section 114AA of the Customs Act, 1962.

I. No penalty can be imposed under section 117 of the Customs Act.

54. It is submitted that section 117 provides for residual penalty when there is any contravention of the provision of this Act and for which no express penalty has been provided elsewhere. Section 117 is reproduced below:

Section 117 - Penalties for contravention, etc., not expressly mentioned

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding four lakh rupees.

55. The issue in the present case is only of classification which is a legal exercise and therefore, there is no violation of any of the provisions of the Customs Act and no penalty can be imposed under section 117 of the Customs Act.

J. No penalty can be imposed on the noticee Directors under Section 112(a), 112(b), Section 114A and Section 117 of the Customs Act, 1962

56. In the aforementioned paras it has already been submitted that the classification of imported goods shall fall under CTH 2712 and there is no implication of any differential duty liability. Further the present case is a case involving interpretation of classification in terms of Customs Tariff Act, 1975 which is a legal exercise and cannot be correlated with act which violates the provisions of the customs act or rules made there under.
57. It is submitted that penalty under Section 112 of the Act can be imposed only when:
- a) goods must be liable to confiscation under section 111.
 - b) the person on whom the penalty is sought to be imposed must have done or omitted to do something, or abetted in performance of an act as a result of which goods became liable to confiscation under section 111.
58. In the present case the goods are not liable to confiscation as the goods were cleared after proper filing of B/E and on payment of applicable duties. Further there is no allegation in the SCN that the goods does not correspond to the value declared by the noticee importer therefore no penalty can be imposed on the noticee directors under section 112 of the Act.
59. Further no false or incorrect material has been used therefore no penalty can be imposed under section 114AA of the Act. Penalty under section 117 is not attracted as the noticee directors have not violated any of the provisions of the Customs Act, 1962 and rules made there under. The only issue is of classification and that too does not attract any differential duty liability as already been explained in the aforementioned paras.
60. Further submitted that the classification under CTH 2710 has been adopted by other importers also. This is an all-industry issue where the Waksol grade of products have been imported by the importers under CTH 2710 instead of CTH 2712. Further, due to change in classification there is no implication of duty therefore allegation that the noticee has misclassified the imported goods in order to avoid payment of duty is not sustainable at all. The classification under CTH 3405 suggested by the department is not all applicable for the imported goods as the goods does not correspond to description of products provided under CTH 3405. The imported product is not a polish to be used in the wooden furniture or wooden works rather paraffin wax which is further used in the manufacture of chlorinated paraffin.

No penalty can be imposed on M/s. IMC Ltd. under section 73(A)(3), 112(a) and 112(b) of the Customs Act, 1962.

61. It has been alleged by the department that the commingling of the imported product has resulted into manufacture of a different product and the noticee has not taken any permission for manufacturing under section 65 of the Customs Act, 1962. It is submitted that commingling of imported products which is a homogeneous mixture does not amount to manufacture. The Waksol series products remained Waksol products. There was no change in the characteristics or identity of the imported product. The said process did not result in transformation of Waksol into a new product having a different identity, characteristic and use. The classification of all these materials remained same. The end use of all these products is the manufacture of chlorinated paraffin. So, the allegation of the department that the commingling has resulted into the manufacture of a different product is not sustainable at all.
62. It is submitted that the noticee has prepared all the records regarding storage of the imported products and the goods were only allowed to be cleared from the tanks on proper filing of Bill of Entry for Home consumption and after payment of applicable customs duties. It is not even the case of the department that goods have been cleared from tanks without filing B/E for home consumption or without payment of applicable duties of customs declared on the bill of entry by the importer. IMC has always prepared and maintained the data of goods stored in their tanks by the importer and other parties and always available for inspection by the customs authorities.
63. So, the allegation of the department that a different product in commingled state has been cleared which was taking place without order of the proper officer is not sustainable at all.
64. It is submitted that comingling of the Waksol grade of products has not violated any provisions of the customs Act in view of the following:
- i. comingling is not relevant for deciding the classification of the imported products as all the Waksol grade of products is having same classification.
 - ii. From tax perspective the imported product is homogenous as every molecule of the imported product is subjected to same duty.
 - iii. Due to practical issues / logistics i.e., shortage of storage space the imported product was comingled.
65. Without prejudice to the above submissions, comingling can only be treated as a procedural issue and does not amount to violation of the provisions of

section 62(2), Section 68(c), and 71 of the Customs Act. Extract of Section 62(2), Section 68(c), and 71 of the Customs Act, 1962 is reproduced below: -

62. Control over warehoused goods:

- (1)
- (2) *No person shall enter a warehouse or remove any goods therefrom without the permission of the proper officer.*
-

68. Clearance of warehoused goods for home consumption:

- The importer of any warehoused goods may clear them for home consumption of-*
- (a).....
 - (b).....
 - (c) *an order for clearance of such goods for home consumption has been made by the proper officer*

71. Goods not to be taken out of warehouse except as provided by this Act:

No warehoused goods shall be taken out of a warehouse except on clearance for home consumption or re-exportation, or for removal to another warehouse, or as otherwise provided by this Act.

- 66. It is submitted that the provisions of section 62 of the Customs Act, 1962 has been omitted vide Finance Act, 2016. Even if we consider the erstwhile provision of section 62(2), there is no violation. The goods have been stored in warehouse after filing of warehouse Bill of entries. Further the goods were removed from the warehouse after filing the Bill of entries for home consumption and on payment of applicable duties of customs. So, the allegation of violation of provision of section 62(2), 68 and 71 is not sustainable at all.
- 67. Since, there is no violation of the provisions of section 71 of the customs Act as the goods have been cleared from warehouse for home consumption on payment of applicable duties of customs, no penalty can be imposed under section 73(A)(3) of the customs Act.
- 68. Further submitted that the commingling of imported goods in the tanks is normal old practice. Due to shortage of tanks the importers used to commingle the imported products in tanks. The Director of the importer in his statement has also stated that imported products are commingled due to shortage of tanks. There is no change in the imported product before and after commingling and there is no change in the classification of the product. The use of the imported products is also same. The imported

products are to be used in the manufacture of chlorinated paraffin only and not for any other purpose.

69. So, commingling of imported products is a normal practice at ports and never objected by the department. Therefore, it cannot be alleged that comingling has resulted in violation of any provisions of Customs Act, 1962. Further, IMC has not done any act for which the goods are liable to confiscation and therefore no penalty can be imposed under section 112 of the Customs Act either.

DISCUSSION AND FINDING:

35. I have carefully gone through the records of the case, including the order dt. 06.04.2023 of Tribunal, and Show Cause Notice dated 22.01.2020 and Supplementary Show Cause Notice dated 07.02.2020, the written submission dated 23.02.2024, as well as the oral submission made during the course of virtual hearing. I have also perused the Order-in-Original dt. 04.02.2021.

36.1 I find from the record of the proceedings that the following opinion of CRCL is the crux of the evidence relied in Show cause notices and for confirmation of demand vide Order-in-Original dated 04.02.2021, and this opinion interalia needs to be reexamined in the light of Tribunal Order dt 06.04.2023.

*“3. The Product u/r “WAKSOL 9-11 A” also does not fall under the chapter 2712 “Petroleum jelly, paraffin wax, microcrystalline Wax, Ozokerite, Lignite Wax, Peat Wax, other mineral waxes, and similar products obtained by synthesis or by other processes, whether or not colored” since the sample having **congealing point less than 30°C,**”*

*“4. As this sample is not any of the waxes falling under Chapter 271210 to 27129090 **or not of** Petroleum oils and oils obtained from Bituminous Minerals, preparation containing 70% or more than of Petroleum oils from 271012 to 27109900 and it is blend/mixture of WAKSOL A, **a synthetic Paraffin wax and Paraffin having Carbon number C9-C12.** The Paraffin C9-C11 is a ingredient **used as carrier** to improve consistency of polishes in which the WAKSOL A is a principal component used to import water proof, wear resistant and other properties of polishes and thus the blend of paraffin C9-C11 and WAKSOL A to get the preparation “WAKSOL 9-11 A” is **correctly falls under the chapter 3405.20** as reported earlier.” (PARA 11 of SCN)”*

36.2. The order dated 06.04.2023 of Hon’ble CESTAT has been accepted by the department on 01.08.2023.

37. The present proceedings arise on account of following directions of Hon’ble Tribunal Order dated 06.04.2023, while disposing appeal against OIO dated 04.02.2021 that was issued to conclude proceedings initiated vide Show cause notices dated 22.01.2020 and 07.02.2020 issued in the matter:-

“27 ... the appellants initially claimed goods under Tariff Heading 2710 as classification of the product in their Bills of Entry, but after being confronted with various evidence during investigation by DRI made alternate submissions for the product to be appropriately classified under Tariff Heading 2712, on the ground that the product cannot be classified under Tariff Heading 3405.”

“ We find that TH 3405, pertains to various end products and excludes waxes of heading 3404. Also the product is an Industrial Raw Material for manufacturer of another Industrial Raw Material i.e. Chlorinated Paraffin Wax and cannot be covered under Tariff Heading 3405..”

“... and that even explanatory notes to CTH 3405 (2017 edition) as well as the finding of the learned adjudicating authority, in para 45.2 point to the effect that Waksol 911-A, Waksol 911-B, is not exclusively used for Chlorination and can also be used for other purposes like Polishes, cream and similar preparations for the maintenance of wooden furniture, floors for other wooden work. The findings therefore only show the possibility and do not conclusively decide the nature of the product or its classification as the product literature and material on record shows that Waksol products are used in Chlorination and therefore do not appears in the nature of product of Tariff Heading 3045. We find that simply some alternate usage existing of the product or the possibility of their being used as such, will not make the product of the nature specified in Tariff Heading 3405 specifically when product used and specified in Tariff Heading 3405 are in the nature of end products and not in the nature of raw-materials.”

“ The department has to conclusively bring on record the predominant usage of the product with evidence to discharge burden of classification. Further, in view of the trite law, learned adjudicating authority should have given his own findings on the classification sought and not relied on one given by the Chemical analyst.”

“ To justify classification under 3405 department will need to show that the product imported was not essentially in the nature of intermediate product or raw material and was not often Put up for retail sale” as is the requirement laid down in HSN explanatory notes to CTH 3405 (2017 edition referred).”

“The argument of the appellant that classification under chapter 3404 cannot be justified as the Fisher/Tropsch Technology was used and which excluded its classification under 3404 is a mutually accepted position and needs no discussion from us.”

28.....that a detailed examination about the nature of product, its usage and its proper classification based upon exclusion clauses of HSN explanatory note is warranted including of consideration of chapter 2712”

“ In view of claim of product being in the nature of Slag wax, same needs elaborate discussion and findings from the authority below. The decisive usage required to be established by the department has to be predominant or common usage and not merely based on possibility”

“We, therefore, allow the appeal by way of remand directing the adjudicating authority to determine the exact nature and usage of the product imported. While doing so, the rival claims shall be considered including that of chapter 2712, by not getting influenced in any way by the classification indicated by the chemical analyst.”

“The question of penalties on various appellants who are part of the bunch are also likewise kept open and remanded to be consequent upon the outcome of classification decision and respective involvement.”

38. Having referred to the findings and directions of the Hon’ble Tribunal order in earlier para, I turn to evidences placed on record by SCNs dated 22.01.2020 and 07.02.2020.

39. Evidences in SCNs dated 22.01.2020 and 07.02.2020 regarding samples from Tank No. 205 and other storages;

39.1 The Chemical Examiner Grade-I, Kandla vide report dated 31.08.2015 reported that the congealing point of the sample pertaining to import goods reported to be 21 deg C. **(RUD-4 of SCN)**

39.2 The Chemical Examiner Grade-II, CRCL, New Delhi, vide Test Reports C.No. 35-CRCL/2015/CL-40/DRI/14.9.15 dated 13.10.2015 with respect to the representative samples for the imported goods stored in Tank No.205 reported the test results as under **(Para 5 of SCN)**

*“The sample is in the form of clear colourless oily liquid. It has the characteristics of wax and having mineral hydrocarbon oil content (% by mass)= 15.0.
Aromatic content=9.7% by wt.
Ash Content=NIL
Pour point =16 deg. C
Flash point (RMCC)= 55 deg. C
Actual use may be ascertained.*

39.3 Regarding representative samples of Waksol 9-11A forwarded to Custom House Laboratory, Kandla, vide letter dated 22.02.2016 along with Test Memo No. 93/2015-16 dated 22.02.2016 and 94/2015-16 dated 22.02.2016, The Joint Director, Custom House Laboratory, Kandla, vide their reports, opined as under **(Para 7 of SCN):-**

| S.No. | Tank | Test | Memo | Report No. & | Test Results/Report |
|-------|------|------|------|--------------|---------------------|
|-------|------|------|------|--------------|---------------------|

| | No. | No. & Date | Date of CHL, Kandla | |
|---|-----|----------------------------------|---------------------------|--|
| 1 | 205 | 89/2015-16 dtd. 03.02.2016 | DRI-37 dtd. 02.11.2016 | The sample is in the form of colourless oily liquid, composed of paraffinic compound. Test conduct with solvent/solvent mixture as per ASTM D-721-02 and ASTM D-3235-02 does not show any oil separation. Hence, the sample may be considered as wax preparation. |
| 2 | 101 | 93/2015-16 dtd. 22.02.2016 | DRI-45 dtd. 02.11.2016 | The sample is in the form of colourless oily liquid, composed of paraffinic compound. Test conduct with solvent/solvent mixture as per ASTM D-721-02 and ASTM D-3235-02 does not show any oil separation. Hence, the sample may be considered as wax preparation. |
| 3 | 205 | 94/2015-16 dtd. 22.02.2016 | DRI-46 dtd. 02.11.2016 | The sample is in the form of colourless oily liquid, composed of paraffinic compound. Test conduct with solvent/solvent mixture as per ASTM D-721-02 and ASTM D-3235-02 does not show any oil separation. Hence, the sample may be considered as wax preparation. |

(Para 8 of SCN)

39.4 As stated under para 10 of SCN, with regard to request to offer his technical opinion regarding the classification of goods “Waksol 9-11A” under appropriate Customs Tariff, the Joint Director, Custom House Laboratory, Kandla vide report dated 09.04.2019 opined that -

The manufacturer’s literature and certificate of analysis issued by M/s. Intertek for the product under reference, i.e., Waksol 9-11 stated that the percentage content of component with Carbon 8, i.e., Paraffin oil content was 0.7% and 0.6% respectively.

Also, the oil content obtained by analysis carried out by ASTM D 721 and ASTM D 3235 methods confirmed that the **Petroleum oil was less than 70%.**

The product under reference, i.e., Waksol 9-11A did not fall under Ch. 2710.

Waksol-A and C₉-C₁₁ Paraffins were blended in proprietary ratio to produce Waksol 9-11.

Also, the general note to HSN for Ch. 34 states that the product obtained by the **industrial treatment** of Fats, oils or waxes were covered under Ch. 34.05; that based on the above facts, they (Custom House Laboratory, Kandla) opined that **the product ‘Waksol 9-11A’ was a preparation/ blend of Waksol A (Hydrocarbons C₁₄-C₂₈) and C₉-C₁₁ paraffins.**

39.5 The Joint Director, Custom House Laboratory, Kandla was further asked by DRI vide letter dated 30.04.2019, to give expert technical opinion under which CTH, the subject good 'Waksol 9-11A' was covered. It was also asked to supply detailed reason in support of his opinion. **(PARA 10 of SCN)**

In response, the Joint Director, Custom House, Laboratory, Kandla opined as under:-

*"2. The product u/r, "WAKSOL 9-11 A" does **not fall under chapter 2710**, i.e. from 27012 to 27109900, of "Petroleum oils and oils obtained from Bituminous Minerals, other than crude; preparations not elsewhere specified or included, containing By weight 70% or more of Petroleum oils or of oils obtained from Bituminous minerals, These oils being the basic constituents of the preparation; Waste oils", as **the sample containing oils less than 70.0%**.*

*3. The Product u/r "WAKSOL 9-11 A" also **does not fall under the chapter 2712** "Petroleum jelly, paraffin wax, microcrystalline Wax, Ozokerite, Lignite Wax, Peat Wax, other mineral waxes, and similar products obtained by synthesis or by other processes, whether or not colored" **since the sample having congealing point less than 30°C**,*

*(a) The **congealing point** of the products Petroleum jelly, Petroleum Wax, Microcrystalline petroleum Wax, slack Wax and **other waxes falling under chapter 271210 to 27129090 should be more than 30°C (ASTM D 938)***

*(b) Since the **congealing point is one of the critical Parameter**, as it is not compiles to standard value, other parameters like density at 70°C, work cone penetration index at 25°C (ASTM D 217), cone penetration at 25°C (ASTM D 937) the set of parameter mentioned in HSN Note for 27.12, are no need to carry our further.*

*4. As this **sample is not any of the waxes** falling under Chapter 271210 to 27129090 **or not of Petroleum oils and oils obtained from Bituminous Minerals**, preparation containing 70% or more than of Petroleum oils from 271012 to 27109900 and it is blend/mixture of WAKSOL A, a synthetic Paraffin wax and Paraffin having Carbon number C9-C12. **The Paraffin C9-C11 is a ingredient used as carrier** to improve consistency of polishes in which the **WAKSOL A is a principal component** used to import water proof, wear resistant and other properties of polishes and thus the blend of paraffin C9-C11 and WAKSOL A to get the preparation "WAKSOL 9-11 A" **is correctly falls under the chapter 3405.20 as reported earlier.**" **(PARA 11 of SCN)***

39.6 Directorate General of Shipping, Mumbai vide letter dated 16.12.2015, informed that the products Waksol 9-11A and 9-11B were categorized in List 3 of Annexure-3 of MEPC.2/Circ.20 dated 17.12.2014 of the IMO; The List 3 included Trade named mixtures containing at least 99% by weight of components already assessed by IMO, presenting safety hazards and as per the Tripartite Agreements with respect to List 3 and PPR Product Data Reporting

Form, Waksol 9-11A and Waksol 9-11B contained **n-alkanes (C9-C11) and Paraffin Wax. (PARA 13 of SCN)**

39.7 The Manufacturer supplier of products Waksol 9-11A and Waksol 9-11B, viz., M/s. Sasol, South Africa through their marketing agent M/s. Apratim International Pvt. Ltd., New Delhi, with respect to main components of said products, their manufacturing process, end use, etc. provided the Certificate of Analysis, Product Data Sheet, Material Safety Data Sheet of product Waksol 9-11A and printout of email received from M/s. Sasol, South Africa in which the manufacturing process of product Waksol 9-11A, which is narrated in para 14 of SCN. Further, SASOL's explanation of manufacturing process is provided in para 16.3 and 21 of SCN, and extracted in earlier paras.

39.8 The Physical properties of said products were detailed in the PPR Product Data Reporting Form received from Directorate General of Shipping, Mumbai, are extracted in earlier paras.

39.9 The oil content in the Waksol A and Waksol B which are the main component (70-80% part) of Waksol 9-11A Waksol 9-11B, is 14 % (by mass) and 9% (by mass) respectively as per Product Data Sheets provided by supplier manufacturer M/s. Sasol, South Africa as per certificate of analysis of M/s Intertek reproduced in para 19 of SCN and extracted in earlier paras.

40. EVIDENCE IN THE FORM OF STATEMENTS OF VARIOUS PERSONS

As per various statements referred to in the SCN, the end use of impugned goods is for manufacturing of chlorinated paraffin which was used in PVC industries, shoe industries, polymer industries and wire and PVC pipe industries and marine paint industries etc. **(PARA 16.1, 16.3, 16.6 of SCN, reproduced in earlier portion of the this order)**

Shri Krishan Kumar, Director, M/s ApratimLtd. also explained the composition, manufacturing, Characteristics and applications of the products of M/s. Sasol including WAKSOL 9-11 A and WAKSOL 9-11 B etc. stating that all these products were supplied to Chlorination Industry for manufacturing CPW (Chlorinated Paraffin waxes); that WAKSOL A was mainly composed of C18-C26 Paraffins and C9-C11 was n-paraffin solvent having carbon chain of 9 to 11 carbon atoms; that M/s. Sasol used Gas to Liquid technology by Fischer Tropsch process to manufacture Waksol-A and C9-C11. He also informed that the product Waksol 9-11A is obtained by blending WAKSOL A and C9-C11 in the ratio (having WAKSOL A 70 % to 80% and C9-C11 20 % to 30% **(PARA 16.3 of SCN)**

They were importing raw materials including Waksol 9-11A for producing chlorinated paraffin wax/Oil (CPW) for use in various industries; that the Waksol 9-11A was mainly composed of C12-C20 (50%), C9-C11(20%) and C21-C30 (30%) \pm 5% paraffin; that to produce Chlorinated Paraffin, Waksol 9-11A was chlorinated under controlled temperature and the Chlorinated Paraffin was used for lower grade compounding (lower quality PVC/Rubber used for pipes, shoes sole etc). As a Chlorinated Paraffin (CP), it could be used in oil paint as elasticiser; that the quality of CP made from Waksol 9-11A was inferior to that of other paraffins (C10-C13, C14-C17, C10-C14). **(PARA 16.4 of SCN)**

41. Evidences in SCNs dated 22.01.2020 and 07.02.2020 regarding material in Tank No. 113-

41.1 The test report No.DRI/10 dated 13.08.2015, for the sample pertaining to import goods (comingled goods) stored in Tank No.113, for the point *“whether the product contain by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals”*, states the opinion of Chemical Examiner Grade-I, CHL, Kandla that - “Petroleum oil more than 70%”. (Para 4 of the SCN).

41.2. The sample of Tank No. 113 was subsequently sent to CRCL, New Delhi for testing.

41.3 Covered by the Test Memo No. 60/2015-16 dated 03.09.2015 which was meant for representative sample pertaining to import goods stored in Tank No.113 in which comingled cargo of N-Paraffin and Waksol C9-11 was stored, the Chemical Examiner Grade-II, CRCL, New Delhi, vide Test Report C.No. 35-CRCL/2015/CL-418 DRI/14.10.15 dated 17.11.2015 reported that the sample under reference was composed of mineral hydrocarbon oil more than 70% by weight. (Para 5.1 of SCN)

41.4. Various statements brought on record in the SCN refer to the comingled state of the goods in Tank No 113, being not in the state in which the goods were imported.

42. Considering evidence in SCN and also directions of Tribunal *“To justify classification under 3405 department will need to show that the product imported was not essentially in the nature of intermediate product or raw material and was not often Put up for retail sale”* as is the requirement laid

down in HSN explanatory notes to CTH 3405 (2017 edition referred)”, the discussion is made below under following heads.

42.1 Nature of goods and their Predominant use.

42.2 Are the goods in question ‘preparation often put up for retail sale’.

NATURE OF GOODS AND THEIR USE

43. Hon’ble Tribunal mandates that impugned goods be examined w.r.t various exclusion clauses under relevant HSN Notes, and consider them under rival claims including 2712. Thus, to work towards clarity on the issue, it is necessary to study CTH 2712, 3404 and 3405 together, though both Revenue and importer are in agreement before the Hon’ble Tribunal that impugned goods are not classifiable under CTH 3404.

In this regard, it needs to be stated that the goods were classified under 2710 by the importer. An SCN was issued proposing classification under 3405. There was a request by the importer – Noticee, at the time of adjudication, before the adjudicating authority to consider the matter w.r.t 2712 and 3404 also, apart from 2710 adopted by the importer at the time of filing Bills of Entry and also 3405 proposed in the SCNs, and to decide the correct classification. The said proceedings resulted in Order-in-Original dated 04.02.2021, and said submissions to consider 3404, along with 2712 and 3405, were recorded in para 32.3 of the Order dated 04.02.2021. In view of this background, I find it correct to examine the issue w.r.t entries under CTH 2712, 3404 and 3405.

44. The relevant CTH and HSN are accordingly reproduced below:-

CTH 2712

| Tariff Item | Description of article |
|--------------------|---|
| 2712 | Petroleum jelly, paraffin wax, microcrystalline petroleum wax, slack wax, ozokerite, lignite wax, peat wax, other mineral waxes, and similar products obtained by synthesis or by other processes, whether or not coloured |
| 2712 10 | - Petroleum jelly : |
| 2712 10 10 | --- Crude |
| 2712 10 90 | --- Other |
| 2712 20 00 | - Paraffin wax containing by weight less than 0.75% of oil |
| 2712 90 | - Other : |
| 2712 90 10 | --- Micro-crystalline petroleum wax |
| 2712 90 20 | --- Lignite wax |

| | |
|------------|--|
| 2712 90 30 | --- Slack wax |
| 2712 90 40 | --- Paraffin wax containing by weight 0.75% or more of oil |
| 2712 90 90 | --- Other |

HSN explanatory notes to CTH 2712 (2017 edition)

(A) Petroleum jelly.

Petroleum jelly is unctuous to the touch. It is white, yellowish or dark brown in colour. It is obtained from the residues of the distillation of certain crude petroleum oils or by mixing fairly high viscosity petroleum oils with such residues or by mixing paraffin wax or ceresine with a sufficiently refined mineral oil. The heading includes the jelly, whether crude (sometimes called petrolatum), decolourised or refined. It also covers petroleum jelly obtained by synthesis.

To fall in this heading petroleum jelly must have a congealing point, as determined by the rotating thermometer method (ISO 2207 equivalent to the **ASTM D 938 method**), of not less than 30 °C, a density at 70 °C of less than 0.942 g/cm³, a Worked Cone Penetration at 25 °C, as determined by the ISO 2137 method (equivalent to the ASTM D 217 method), of less than 350, a Cone Penetration at 25 °C, as determined by the ISO 2137 method (equivalent to the ASTM D 937 method), of not less than 80.

This heading does not, however, include petroleum jelly, suitable for use for the care of the skin, put up in packings of a kind sold by retail for such use (heading 33.04).

(B) Paraffin wax, microcrystalline petroleum wax, slack wax, ozokerite, lignite wax, peat wax, other mineral waxes, and similar products obtained by synthesis or by other processes, whether or not coloured.

Paraffin wax is a hydrocarbon wax extracted from certain distillates of petroleum oils or of oils obtained from shale or other bituminous minerals. This wax is translucent, white or yellowish in colour and has a relatively marked crystalline structure.

Microcrystalline petroleum wax is also a hydrocarbon wax. It is extracted from petroleum residues or from vacuum-distilled lubricating oil fractions. It is more opaque than paraffin wax and has a finer and less apparent crystalline structure. Normally it has a higher melting point than paraffin wax. It can vary from soft and plastic to hard and brittle and from dark brown to white in colour.

Ozokerite is a natural mineral wax. When purified it is known as ceresine.

Lignite (or Montan) wax and the product known as “Montan pitch” are ester waxes extracted from lignite. They are hard and dark when crude, but may be white when refined.

Peat wax is physically and chemically similar to lignite wax, but is slightly softer.

The other mineral waxes of this heading (slack wax and scale wax) result from the de-waxing of lubricating oils. They are less refined and have a higher oil content than paraffin wax. Their colour varies from white to light brown.

The heading also includes products similar to those referred to in the heading and obtained by synthesis or by any other process (e.g., synthetic paraffin wax and synthetic microcrystalline wax). However, the heading does not include high polymer waxes such as polyethylene wax. These fall in heading 34.04.

All these waxes are covered by the heading whether crude or refined, mixed together or coloured. They are used for making candles (especially paraffin wax), polishes, etc., for insulating, dressing textiles, impregnating matches, protection against rust, etc.

However, the following products are classified in heading 34.04:

(a) Artificial waxes obtained by the chemical modification of lignite wax or other mineral waxes.

(b) Mixtures, not emulsified or containing solvents, consisting of:

(i) Waxes of this heading mixed with animal waxes (including spermaceti), vegetable waxes or artificial waxes.

(ii) **Waxes of this heading mixed with fats, resins, mineral substances or other materials, provided they have a waxy character.**

CHAPTER 34

CHAPTER NOTE 5 TO CHAPTER 34

5. In heading 3404, subject to the exclusions provided below, the expression “**artificial waxes and prepared waxes**” applies only to:

(a) chemically produced organic products of a waxy character, whether or not water-soluble;

(b) products obtained by mixing different waxes;

(c) **products of a waxy character with a basis of one or more waxes and** containing fats, resins, **mineral substances or other materials**, the heading does not apply to:

(i) products of headings 1516, 3402 or 3823, even if having a waxy character;

(ii) unmixed animal waxes or unmixed vegetable waxes, whether or not refined or coloured, of heading 1521;

(iii) mineral waxes and similar products of heading 2712 whether or not intermixed or merely coloured; or

(iv) waxes mixed with, dispersed in or dissolved in a liquid medium (headings 3405, 3809, etc.).

CTH 3404

3404 ARTIFICIAL WAXES AND PREPARED WAXES

- 3404 20 00 - Of poly (oxyethylene) (polyethylene glycol)
- 3404 90 - Other:
 - 3404 90 10 --- Sealing wax (including bottle sealing wax)
 - 3404 90 20 --- Polyethylene wax
 - Artificial waxes (including water soluble waxes) prepared waxes, not emulsified or containing solvents:
 - 3404 90 31 ---- Poly brominated biphenyls
 - 3404 90 32 ---- Poly chlorinated biphenyls
 - 3404 90 33 ---- Poly chlorinated terphenyls
 - 3404 90 39 ---- Other
 - 3404 90 90 --- Other

HSN Explanatory notes to CTH 3404-

This heading covers artificial waxes (sometimes known in industry as “ synthetic waxes ”) and prepared waxes, as defined in Note 5 to this Chapter, which consist of or contain relatively high molecular weight organic substances and which are **not** separate chemically defined compounds. These waxes are:-

(A) Chemically produced organic products of a **waxy character**, whether or not water-soluble. Waxes of **heading 27.12**, produced synthetically or otherwise (e.g., **Fischer-Tropsch waxes consisting essentially of hydrocarbons**) are, however, **excluded**. Water-soluble waxy products having surface-active properties are also **excluded (heading 34.02)**.

(B) Products obtained by mixing two or more different animal waxes, different vegetable waxes or different waxes of other classes or by mixing waxes of different classes (animal, vegetable or other) (for example, mixtures of different vegetable waxes and mixtures of a mineral wax with a vegetable wax). **Mixtures of mineral waxes are however, excluded (heading 27.12)**.

(C) Products of a **waxy character** with a basis of one or more waxes and containing fats, resins, mineral substances or other materials. Unmixed animal or vegetable waxes, whether or not refined or coloured, are, however, **excluded (heading 15.21)**. **Unmixed mineral waxes or mixtures of mineral waxes, whether or not coloured, are also excluded (heading 27.12)**.

The products described in (A), (B) and (C) above, when mixed with, dispersed (suspended or emulsified) in or dissolved in a liquid medium, are however excluded from this heading (headings 34.05, 38.09, etc.).

The waxes of paragraphs (A) and (C) above must have:

- (1) a dropping point above 40 °C; and
- (2) a viscosity, when measured by rotational viscometry, not exceeding 10 Pa.s (or 10,000 cP) at a temperature of 10 °C above their dropping point.

In addition, such products generally display the following properties :

- (a) they take a polish when gently rubbed;
- (b) their consistency and solubility depend largely on temperature;
- (c) at 20 °C :

- (i) some are soft and kneadable (but not sticky or liquid) (soft waxes), others are brittle (hard waxes);
- (ii) they are not transparent but may be translucent;
- (d) at temperatures above 40 °C, they melt without decomposing;
- (e) just above their melting point they cannot easily be drawn into threads;
- (f) they are poor conductors of heat and electricity.

The waxes of this heading vary in chemical composition. Such waxes include:

- (1) Polyalkylene waxes (e.g., polyethylene wax). They are used in packaging materials, textile lubricants, polishes, etc.
- (2) Waxes obtained by partial oxidation of hydrocarbon waxes (such as synthetic or natural paraffin wax). They are used extensively in polishes, coatings, lubricants, etc.
- (3) Waxes composed of mixtures of chloroparaffins, polychlorobiphenyls or polychloronaphthalenes. They are used in flame-proofing, as insulators, capacitor impregnators, lubricants, wood preservatives, etc.
- (4) Poly(oxyethylene) (polyethylene glycol) waxes. They are water-soluble and are used in cosmetics or pharmaceuticals, as binding agents, softeners, preservatives and in adhesives for textiles or paper, in inks or rubber compositions, etc.
- (5) Waxes composed of mixtures of fatty ketones, fatty esters (such as propylene glycol monostearate modified with small quantities of soap, and mixed glycerol mono- and distearate esterified by tartaric acid and acetic acid), fatty amines or fatty amides. They are used in cosmetics, polishes, paints, etc.
- (6) Waxes obtained by partial or complete chemical modification of natural waxes such as lignite wax.
- (7) Waxes composed of two or more different waxes (except mixtures of mineral waxes which fall in heading 27.12) or one or more waxes with other material, for example, wax consisting of paraffin wax and polyethylene, used as coating material, wax composed of paraffin wax and stearic acid, used as raw material for making candles, wax composed of oxidised hydrocarbon wax and emulsifier; sealing wax and waxes of similar composition, however they are put up, other than products of heading 32.14.

The above waxes, if coloured, are also classified here.

Apart from the exclusions mentioned above, the heading does not cover :

- (a) Lanolin alcohols, even if having the character of waxes (heading 15.05).
- (b) Hydrogenated oils, even if having the character of waxes (heading 15.16).
- (c) Separate chemically defined organic compounds (Chapter 29).
- (d) "Dental wax" and "dental impression compounds", put up in sets, in packings for retail sale or in plates, horseshoe shapes, sticks or similar forms (heading 34.07).
- (e) Industrial monocarboxylic fatty acids and industrial fatty alcohols, even if having the character of waxes (heading 38.23).

- (f) Mixtures of mono-, di- and tri-, fatty acid esters of glycerol, not having the character of waxes (heading 38.24).
- (g) Mixed polychlorobiphenyls and mixed chloroparaffins, not having the character of waxes (heading 38.24).
- (h) Poly(oxyethylene) (polyethylene glycol) not having the character of waxes (e.g., heading 38.24 or 39.07).
- (i) Polyethylenes not having the character of waxes (e.g., heading 39.01).

Customs Tariff Heading No. 3405:-

3405 POLISHES AND CREAMS, FOR FOOTWEAR, FURNITURE, FLOORS, COACHWORK, GLASS OR METAL, SCOURING PASTES AND POWDERS AND SIMILAR PREPARATIONS (WHETHER OR NOT IN THE FORM OF PAPER, WADDING, FELT, NONWOVENS, CELLULAR PLASTICS OR CELLULAR RUBBER, IMPREGNATED, COATED OR COVERED WITH SUCH PREPARATIONS, EXCLUDING WAXES OF HEADING 3404

- 3405 10 00- Polishes, creams and similar preparations for footwear or leather
- 3405 20 00- Polishes, creams and similar preparations for the maintenance of wooden furniture, floors or other wood work
- 3405 30 00- Polishes and similar preparations for coach-work, other than metal polishes
- 3405 40 00 - Scouring pastes and powders and other scouring preparations
- 3405 90 -Other:
- 3405 90 10- Polishes and compositions for application to metal including diamond polishing powder or paste
- 3405 90 90 --- Other

Explanatory Notes to HSN in respect of Customs Tariff Heading No.3405 :

This heading **covers polishes and creams for footwear, furniture, floors, coachwork, glass or metal** (silverware, copper etc.) and prepared pastes or powders for scouring cooking utensil, sinks, tiles, stoves **etc. and similar preparations such as** polishes and creams for leather. The heading also includes polishing preparations with preservative properties. **These preparations may have a basis of wax**, abrasives or other substances. Examples of **such preparations are:-**

- (1) **Waxes** and polishes **consisting of waxes impregnated with spirits of turpentine** or emulsified in an aqueous medium and frequently containing added colouring matter.
- (2) Metal polishes and polishes for glass consisting of very soft polishing materials such as chalk or kieselguhr in suspension in an emulsion of white spirit and liquid soap.
- (3) Metal, etc., polishing, finishing or fine-grinding products containing diamond powder or dust.
- (4) Scouring powders consisting of mixtures of very finely ground sand with sodium carbonate and soap. Scouring pastes are obtained by binding these powders with, for example, a solution of waxes in a lubricating mineral oil.

These preparations, which are often put up for retail sale and are usually in the form of liquids, pastes, powders, tablets, sticks, etc., may be used **for household or industrial purposes.**

The heading also covers paper, wadding, felt, nonwovens, cellular plastics or cellular rubber, impregnated, coated or covered with such preparations, but textile dusters and metal pot scourers

similarly impregnated, coated or covered are excluded (Sections XI and XV respectively)

45. For the purposes of understanding nature and use of the goods in question, having referred to CTH and HSN of relevant entries in earlier paras, following discussion is made in terms of exclusion clauses thereunder, and to classify said goods.

46. CLASSIFICATION OF WAKSOL A and WAKSOL B:

46.1. While 3404 excludes waxes of 2712 produced synthetically or otherwise like Fischer Tropsch waxes (consisting essentially of hydrocarbons), Synthetic Paraffin Wax is specifically included under 2712.

HSN 2712 excludes ‘mixture of waxes of 2712 with mineral substances or other material’; whereas, HSN 3404, While including products of a waxy character of ‘one or more waxes with other material’, excludes mixture of mineral waxes that would get classified in 2712.

However, partially oxidized Synthetic or mineral paraffinic wax is included under 3404.

In support of above, relevant portions of HSN are reproduced again –

a.HSN 2712:

The heading also includes products similar to those referred to in the heading and obtained by synthesis or by any other process (e.g., synthetic paraffin wax and synthetic microcrystalline wax).

b.HSN 3404:

(A) Waxes of heading 27.12, produced synthetically or otherwise (e.g., Fischer-Tropsch waxes consisting essentially of hydrocarbons) are, however, excluded.

c.HSN 3404:

The waxes of this heading vary in chemical composition. Such waxes include:

(1)

(2) Waxes obtained by partial oxidation of hydrocarbon waxes (such as synthetic or natural paraffin wax). They are used extensively in polishes, coatings, lubricants, etc.

46.2. Waksol A is a Synthetic Paraffin Wax, as per opinion of CRCL (para 11 of SCN), and Parafin wax as confirmed by statement dated 19.01.2016 of Shri Krishan Kumar, Director of M/s Apratim. The statement dated 07.06.2017 of

Shri K.C.Goyal states that Waksol A is obtained from Reactor Wax. Shri Krishan Kumar, informed the investigating agency that M/s Sasol used gas to liquid technology Fischer-Tropsch process to manufacture Waksol A and C9-C11. The product Waksol 9-11 A is obtained by blending Waksol A and C9-11 in the ratio of 70 % to 80 % and 20 % to 30% (Para 16.3 of SCN). The CRCL opinion, stated in para 11 of the SCN, treats WAKSOL 9-11A as '**a synthetic Paraffin wax**'.

Waksol A and C9-C11 n-paraffin are blended in a proprietary ratio to produce Waksol 9-11A which is a liquid at room temperature (20 deg. C).

46.3 HSN explanatory note to CTH 2712 (2017 edition) discusses about the paraffin wax as given below: -

Paraffin wax is a hydrocarbon wax extracted from certain distillates of petroleum oils or of oils obtained from shale or other bituminous minerals. This wax is translucent, white or yellowish in colour and has a relatively marked crystalline structure.

On perusal of the test report dated 13.10.2015 as well as the submission of the noticees referred above, it is seen that, WAKSOL A is manufactured from Syngas in Fischer-Tropsch process as stated by SASSOL, whereas Paraffin Wax is made from shale or other bituminous minerals and for the said reasons Waksol A cannot be considered as natural Paraffin wax.

46.4 As regards Hon'ble Tribunal direction to examine whether it is in the nature of Slack Wax, it is seen that SASSOL has submitted an explanation of the process to say, though it is nearer to Slack Wax, it is chemically different.

The name "Waksol" is derived from a combination of African words 'Waks' (Wax) and 'Olie' (oil) due to its nature. It is convenient to handle the material as if it was a very soft wax to ensure it is fully liquid and homogeneous, otherwise separation could occur during handling. Waksol is a product unique to the Fischer Tropsche process. The nearest equivalent in crude oil refining is "slack" wax, however, Waksol is chemically more n-paraffinic and contains a much higher proportion of lower carbon numbers.

Further to the point that WAKSOL A is not from Crude Oil refining, there is also no evidence to suggest de-waxing of lubricating oils. HSN 2712 refers to Slack Wax as below-

The other mineral waxes of this heading (slack wax and scale wax) result from the de-waxing of lubricating oils.

SASSOL further states that –

Waksol A does not meet the definition of wax according to the European Wax Federation and for this reason is not included in Sasol's Reach registration for Fischer Tropsch waxes.

For the said reasons, WAKSOL A cannot be considered as Slack Wax.

46.5 HSN 2712 states that, apart from natural paraffin wax, 2712 also includes synthetic Paraffin wax. The following HSN note to 2712 makes it clear-
HSN 2712 –

The heading also includes products similar to those referred to in the heading and obtained by synthesis or by any other process (e.g., synthetic paraffin wax and synthetic microcrystalline wax).

46.6 HSN 3404 refers to oxidation of hydrocarbon waxes, and their inclusion under CTH 3404.

HSN 3404

The waxes of this heading vary in chemical composition. Such waxes include:

(1),

(2) Waxes obtained by partial oxidation of hydrocarbon waxes (such as synthetic or natural `paraffin wax). They are used extensively in polishes, coatings, lubricants, etc.

OXIDISED SYNTHETIC PARAFFIN WAX CLASSIFIABLE UNDER 3404

46.7 However, it is noted that, as per e mail of M/s SASSOL (RUD 18, para 14 of SCN), distillation of Reactor Wax results in Oxidised Parafins of C16-C22 range. Whereas CRCL report refers to WAKSOL A being Hydrocarbons C 14-C28 (**Para 10 of SCN**).

Further, Email of M/s Sasol referred to in Para 16.3 of SCN states the following

The condensates are distilled to remove any wax and then hydrogenated to remove unsaturation and small amounts of oxygenates present in the condensate. This stream is then distilled further to produce a number of paraffinic products which includes C9-C11, C10-13 and C14-20 n-paraffin. The reactor wax is distilled into a number of fractions, the lightest being Waksol A which mainly consists of (Oxidised Paraffins) hydrocarbons in the C16-C22 range. As its melting point is typically 26-28°C. Waksol A and C9-C11 n-paraffin are blended in a proprietary ratio to produce Waksol 9-11A which is a liquid at room temperature (20°C)".

In his statement Dt. 07.06.2017, Shri K.C. Goyal clarified that Shri Krishan Kumar forwarded him the manufacturing process and after going through the manufacturing process he requested Shri Krishan Kumar to remove the word "reactor wax" and "Oxidized paraffin's" from the process

because, in his opinion wax was above C30 and he was not aware of meaning of "oxidized paraffin's", therefore requested for removal of these word from the process but he had never said that there was any change of duty in wax earlier; that he was not aware regarding detail manufacturing process of production of "REACTOR WAX", production of "WAKSOL A" from reactor wax and production of WAKSOL 9-11 A from WAKSOL A; that he would request agent of M/s. Sasol to submit the same.

It is seen from RUD no. 18, referred to in para 14 of the SCN that, the reactor wax is distilled into a number of fractions, the lightest being Waksol A which mainly consists of (Oxidized Paraffins) hydrocarbons in the C16-C22 range.

46.8 Thus, in terms of HSN notes to 3404 that specifically refers to partially oxidized Synthetic Paraffin Wax as classifiable under 3404, and in terms of evidence discussed above - that Waksol A is synthesized from Syngas in Fischer-Tropsch process; and the evidence in the form of Email from M/s Sasol Stating that hydrocarbons of C16-22 range are oxidized – Waksol A is correctly classifiable under CTH 34049039.

47. CLASSIFICATION OF WAKSOL 9-11 A and WAKSOL 9-11 B

Issue of classification of mixture of WAKSOL A and C9-11 is examined against nature of mixtures listed under HSN 2712, 3404 and 3405 in earlier paras. Further, in the context of WAKSOL 9-11 A being a mixture of wax and C9-11, the following provisions of 2712, 3404 & 3405 are referred to

47.1.1 Exclusion clause under HSN 2712:

“However, the following products are classified in heading 34.04:

- (a),*
- (b) Mixtures, not emulsified or containing solvents, consisting of:*
 - (i),*
 - (ii) **Waxes of this heading mixed with fats, resins, mineral substances or other materials, provided they have a waxy character.***

The relevant portion of (b)(ii) above indicates that, in a state of not emulsified or containing solvents, mixture of waxes of 2712 with mineral substances or other material are not classifiable in 2712. As stated earlier, WAKSOL 9-11A is a mixture of WAKSOL A and C9-11. It is not a mixture of two waxes both classifiable under 2712.

47.1.2 As stated in earlier para, Waksol A is an oxidized Synthetic Paraffin Wax. In terms of progressive structure of tariff entries of 2712 and 3404, when C9-11 (any other material) is mixed with Waksol A, it cannot be conceivable to classify the mixture back into CTH 2712. Moreover, as already stated, Waksol A cannot be considered as Slack Wax, and also not as Slack Wax with oil.

47.1.3 The facts of the case and description of Fischer Tropsch process indicate that, we need to reflect on ‘preparation’ as an intentional mixture of products emerging from Fischer Tropsch process in a proprietary ratio.

47.1.4 As per the report of CRCL referred to in para 11 of SCN, Waksol 9-11A is a proprietary mixture of Waksol A and C9-11. The statements and the literature of SASSOL on record also confirm these details.

47.2 As already stated under para 47.1.1 above, HSN of 2712 refers to two kinds of mixtures – one is mixture of waxes of 2712; and the other one is mixture of waxes of 2712 with mineral substances or other materials. If the first one is meant for classification under 2712, the second one is excluded from 2712.

47.3. Having got excluded from 2712 for reasons stated above, WAKSOL 9-11 A is found not classifiable under 3404, for reasons that it is not meeting upto the specifications mentioned under HSN 3404 - like the Waksol 9-11 A are in liquid state at 20 C; they cannot conform to the requirement of “just above their melting point they cannot easily be drawn into threads etc”;

48. In view of the discussion under para 47 above, CTH 3405 and its HSN are taken up for examination.

48.1. HSN 3405 refers to-

*“Polishes and creams, and prepared pastes or powders..... **etc. and similar preparations.** The heading also includes polishing preparations with preservative properties. **These preparations may have a basis of wax.** Examples of such preparations are:-*

- (1) **Waxes and polishes consisting of waxes impregnated with spirits of turpentine** or emulsified in an aqueous medium and frequently containing added colouring matter.*
- (2)”*

48.2. Reference is made in this context to CRCL opinion (para 11 of SCN) states that –

The Paraffin C9-C11 is a ingredient used as carrier to improve consistency of polishes in which the WAKSOL A is a principal component used to import water proof, wear resistant and other properties of polishes and thus the blend of paraffin C9-C11 and WAKSOL A to get the preparation “WAKSOL 9-11 A” is correctly falls under the chapter 3405.20 as reported earlier.

48.3. I also refer to SASSOL's communication referred to in para 21 above and to statements of the Noticees confirming that 'WAKSOL A as a heavy paraffin component in liquid paraffin blends for solvents applications'

SASSOL's statement is to state that WAKSOL A as a heavy paraffin is blended in a proprietary ratio for solvent applications. In the present case, such blending, as CRCL report states, allows the goods in liquid medium to be easily applied with uniformity and consistency.

One of the reasons that require WAKSOL 9-11A to walk out of 3404 is that it is in liquid form at room temperature.

48.4. CONGEALING POINT: The SCN alleges, based on report of Joint Director, Customs House Laboratory, Kandla that, the product doesn't fall under CTH 2712 as "Petroleum Jelly, paraffin wax, microcrystalline wax, Ozokerite, Lignite wax, Peat wax, other mineral waxes and similar products obtained by synthesis or by other processes, whether or not colored" since the sample having congealing point less than 30 deg C. The Joint Director has further opined that the congealing point of the products Petroleum jelly, Petroleum wax, microcrystalline petroleum wax, slack wax and other waxes falling under chapter 271210 to 27129090 should be more than 30 deg C.

However, on perusal of the explanatory notes to CTH 2712, it is apparent that requirement of congealing point above 30 deg C is only for petroleum jelly. However, it needs to be noted that, Congealing Point is an international standard developed for Waxes including Petrolatum. Though HSN 2712 pertaining to Waxes does not mention it, the finding of the Laboratory in this regard is an important parameter interalia to understand the nature of goods. Congealing point reflects level of resistance to flow. The present goods being in liquid form have obviously lower congealing point. CTH 3405 refers to goods being in liquid state.

48.5. The HSN 3405 refers to Polishes and creams, ... and prepared pastes or powders...etc. and similar preparations. One of the example of such preparations being – "(1) Waxesimpregnated with spirits of turpentine or".

Thus, WAKSOL 9-11 A merits consideration as 'similar to preparations' to entries preceding it. Said similar preparations are stated as examples in terms of how they constitute to be such similar preparations.

In the present case, WAKSOL A is a Wax (80% proportion) and is impregnated with a solvent (C9-11). It gets covered by example of " (1) Waxesimpregnated with spirits of turpentine".

Usage of 'Spirits of turpentine' refers, in the context of nature of goods to be identified under CTH 3405, to Mineral Turpentine Oil being C9-11 in the present case. Such a finding supported by the fact that use of white oil/M.T.O in emulsified preparations in Shoe polishes is evident from relevant SION norm, under Foreign Trade Policy, specified for manufacture of Shoe Polish.

48.6. Thus, CTH 3405 includes preparations similar to Polishes/Creams/Powders/Pastes meant for various applications both household and also industrial. This we find from example in case of polishes for Shoe or maintainance of Wooden furniture, and similar preparations for leather or Wood work.

48.7. Thus, considering the scope of 3405 as evident from its HSN and also the reasons stated in above opinion of CRCL report, I find that WAKSOL A and WAKSOL B are correctly classifiable under 34049039.

49. In view of the scope of 3405 as laid out above, after considering the clauses of exclusions under 2712 and 3404, and other evidences as discussed above, WAKSOL 9-11 A is correctly classifiable under 34052000 as preparations similar to polishes/creams/pastes of 3405, in liquid form and for industrial purposes.

Considering the finding that the nature of goods being preparations similar to the goods mentioned under 3405, for both household and industrial purposes, the question of predominant use is also answered in terms of finding that the scope of 'use of similar preparations' is not restricted to few of the specific uses mentioned under CTH. Such a restricted view will render otios the remaining portion of CTH (residuary entries or other conceivable similar preparations interms of HSN details), which cannot be the legislative intent.

PREPARATION OF CTH 3405 –“OFTEN PUT UP FOR RETAIL SALE”:

50. The second issue referred to in Hon'ble Tribunal Order is whether the subject goods are often put up for retails sale as is required under HSN 3405.

50.1. The HSN of 3405 states that -

“These preparations, which are often put up for retail saleand may be used for household or industrial purposes”.

50.2. Use of word 'often' does not denote 'always'. Thus, it does not mean 'essentially'. Use of words-similar products, industrial purpose etc. help us appreciate the same.

50.3. Use of word 'industrial purpose' indicates that goods of 3405 can also be used by 'Industrial/institutional consumers'.

Further, Legal Metrology Acts/Rules, which regulates retail sale, exempts industrial buyers from its operation, if goods of 3405 are to be used for industrial purposes.

50.4. Further, 3405 represents, apart from polishes/creams/pastes/powder, 'similar preparations'. Usage 'use for industrial purposes' expands the scope of 3405 beyond 'products for end consumers', and it includes preparations of similar nature but is raw material for some other products.

50.5. Thus, as regards the examination of the goods as to whether they are intermediate /Raw material or end products fit for retail sale, in the contest of importer's submission that the impugned goods are meant for use in manufacture of Chlorinated Paraffin Wax, it is stated here that, as recorded in the foregoing paras above, subject goods are covered in terms of its constituents and properties and its nature under CTH 3405. Thus, question or feasibility of its further use, or fact that importer intends to use it, as raw material has no effect on the classification suggested above.

51. Thus, to decide the classification of impugned goods, that are claimed to be used for manufacture of Chlorinated Paraffin Wax and for various industrial purposes, even if used, decisive consideration, over and above the test of retail sale, is examining the goods in terms of its constituents and nature. This test is answered in foregoing paras.

Thus, determining the use is a valid consideration, but not an essential one, to decide the classification. Exercise to determine the predominant use of subject goods in terms of end product or raw material is not same as capturing the scope of CTH 3405. Considering the HSN, even if the goods are raw material for some other industrial purpose, the goods still merit classification under CTH 34052000. Reference is made here to decision of Hon'ble Supreme Court in the case of TATA ENGINEERING & LOCOMOTIVE COMPANY LTD. 1994 (74) E.L.T. 193 (S.C.) was examining the word 'Raw material in the context of Bihar Finance Act, 1981, and held that,

"The word 'raw-material' has no fixed meaning. It may vary with the use to which it is put. An item may be raw-material for manufacturing goods 'A' and the goods so produced may itself be raw-material for goods 'B'. For instance, batteries, tyres and tubes are by themselves finished products. They on their own cannot be considered to be raw-material. But when it is used for manufacture of a vehicle then it becomes raw-material for it as it is essential and necessary for producing the goods in which it has been used."

In view of the discussion, I have considered various submissions referred above and also the case law relied upon, and these are disposed accordingly.

52. In view of the above, I find that the noticee-importers have mis-classified the subject goods in the subject Warehouse Bills of Entry and their corresponding Ex-bond Bills of Entry and also in the Bills of Entry for Home Consumption. Thus, they have contravened the provisions under Section 46(4) of the Customs Act, 1962. The above discussion clearly indicates that the goods, viz. Waksol-A and WAKSOL B are correctly classifiable under CTH 34049039, and Waksol 9-11A and Waksol 9-11B etc. are correctly classifiable under Tariff Item 34052000, and the classification of such products done by the importer-noticees under Tariff Item 27101990 is liable to be rejected.

53. The importer-noticees (M/s. PI IPL and other importers who had filed the Ex-Bond bills of entry) have imported Waksol-A, Waksol B, Waksol 9-11A, Waksol 9-11B etc. and paid less Customs duty by willfully mis-classifying the said product under Tariff Item 27101990 during the period covered under the Show Cause Notice, i.e., from 27.06.2014 to 02.04.2019 as detailed in Annexure-B to the SCN. Shri Krishna Kumar, Director of M/s. Apratim International Pvt. Ltd., an agent of overseas manufacturer supplier has also stated in his statement that Shri K. C. Goyal, Director of the importer-noticee (M/s. PI IPL) had directed him to remove the word “reactor wax” from the manufacturing process of the imported goods. It shows mala fide intention on the part of M/s. PI IPL to mis-lead the departmental investigation. Thus, I find that the importer-noticee have knowingly and deliberately mis-classified the import goods under Tariff Item 27101990 with an intent to evade the differential Customs Duties. In view of the above, I find that the provisions of Section 28(4) of Customs Act, 1962 for invoking extended period are attracted in the instant matter and the differential duty is liable to be recovered along with applicable interest under Section 28AA of Customs Act, 1962.

54. I find that the importer-noticees used to clear the comingled warehoused goods from the warehouse for home consumption. They used to obtain out of charge for one kind of goods but were clearing the comingled cargo contained other goods for which out of charge was not obtained. It is an admitted fact that the importer-noticees have also not submitted any evidence to contradict the same. Thus, I find that in the comingled cargo, part of such goods were also cleared for which out of charge was not obtained from the proper officer for home consumption. This act, on the part of the noticees, attracts provisions of Section 111(j) of the Customs Act, 1962.

Further, they have willfully suppressed actual description and parameters of the subject goods and mis-declared the same with respect to classification and therefore, the goods, totally valued at Rs. 120,04,53,951/-

imported by them and mis-declared by way of misclassification.

Above act of deliberate mis-declaration of classification and unauthorized clearance of comingled goods without permission of proper officer rendered the goods liable to confiscation under section 111(j) and 111(m) of the Customs Act, 1962.

55. Now I proceed to consider imposition of redemption fine on the goods liable to confiscation. In the matter of Weston Component Ltd. Vs. Commissioner of Customs, New Delhi [2000 (115) ELT 278 (SC)], the Hon'ble Supreme Court held that redemption fine is imposable even after release of the goods on execution of bond. I find that the subject goods are not physically available for confiscation, however, the same have been released against Warehouse Bonds as well as Test Bonds. Therefore, in view of the said judgment in the matter of Weston Component Ltd., I find that redemption fine is imposable on the goods held liable for confiscation in this case, as provided under section 125 of the Customs Act, 1962.

56. There is a proposal of imposition of penalty on the importer-noticees under Section 114A of the Customs Act, 1962. The said Section provides that where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined. It is contention of the importer-noticees that penalty under Section 114A of the Customs Act, 1962 can be imposed only when there has been instances of short payment or non-payment of duty by reason of collusion or any willful mis-statement or suppression of fact.

In the above context, I donot find any support to them from the judicial decisions relied upon from cases reported as SirthaiSuperware India Pvt. Ltd. vs. Commissioner of Customs, Nhava Sheva-III 2020 (371) E.L.T. 324 (Tri. - Mumbai), C.C., C. EX. & SERVICE TAX, HYDERABAD-II Versus SANDOR MEDICAIDS PVT. LTD. 2019 (367) E.L.T. 486 (Tri. - Hyd.), Surbhit impex p. Ltd. Vs Commissioner of Customs (EP), Mumbai 2012 (283) E.L.T. 556 (Tri. - Mumbai) and International Trade Affairs vs. Commissioner of Customs, Hyderabad 2003 (162) E.L.T. 584 (Tri. - Bang.). I find that the facts and circumstances of the present case are different than the cited judgments/orders as this case is not merely of interpretation in respect of classification but

it involves suppression of actual nature and description of the goods.

As already stated above, in his statement Shri Krishna Kumar deposed that Shri K. C. Goyal requested him to remove the words "reactor wax" from the manufacturing process provided by the supplier. This incident shows that they were fully aware of the nature of the goods but willfully suppressed the same and deliberately mis-classified the goods to evade payment of appropriate duty. In view of these facts the differential duty is liable to be demanded and recovered invoking section 28(4) of the Customs Act, 1962 and accordingly I find that penalty under Section 114A of the Customs Act, 1962 is imposable on importer-noticees.

57. For above stated abetment and omission that rendered goods liable to confiscation under Section 111(j) and (m), the importer-noticees are liable to penalty under Section 112(a) of the Customs Act, 1962. For this commission and omission on the part of importer-noticees, they are liable to penalty under Section 112(b) of the Customs Act, 1962. However, by virtue of fifth proviso to Section 114A of the Customs Act, 1962, where any penalty is levied under section 114A, no penalty shall be levied under section 112 ibid. As the importer-noticees are liable to penalty under Section 114A, in view of above provision, I find that penalty under Section 112(a) and 112(b) ibid is not imposable in this case on the importer-noticees.

58. The importer-noticees [M/s. PIPL and other co-noticees (Ex-Bonders)] have cleared warehoused goods comingled with goods of other importers, without order of proper officer of Customs as admitted by Shri Shivlal Goyal, Shri K.C. Goyal, both Directors and Shri Vishnu P. Naykar, Manager Import and they are liable for penalty under Section 117 of Customs Act, 1962. They have contended that section 117 provides for residual penalty when there is any contravention of the provision of this Act and for which no express penalty has been provided elsewhere; the issue in the present case is only of classification which is a legal exercise and therefore, there is no violation of any of the provisions of the Customs Act and no penalty can be imposed under section 117 of the Customs Act. M/s. PIPL and other co-noticees have cleared warehoused goods comingled with goods of other importer, without order by proper officer of Customs as admitted by Shri Shivlal Goyal, Shri K.C. Goyal, both Directors and Shri Vishnu P. Naykar, Manager Import. They were aware of the fact that the goods of different declared descriptions were comingled and out of charge was granted for only one kind of goods. Despite this, they cleared the comingled goods which contained such goods for which out of charge was

not granted. I find that for the said act, they are liable for penalty under Section 117 of Customs Act, 1962.

59. I find that it is well settled law that in case of taxing statute, various penal provisions are in the nature of civil obligations and do not require any mens rea or wilful intention until and unless the relevant provision provides for the same. I rely judgment of the Hon'ble Supreme Court in the case of UOI Vs Dharmendra Textile Processors – 2008 (231) ELT3 (SC) wherein it was held that mens rea is not essential ingredient in a civil liability. Further, the Apex Court in the case of Chairman, SEBI v. Shriram Mutual Fund [(2006) 5 S.C.C. 361] held as under:-

“Mens rea is not an essential ingredient for contravention of the provisions of a civil Act. Unless the language of the statute indicates the need to establish the element of mens rea, it is generally sufficient to prove that a default in complying with the statute has occurred and it is wholly unnecessary to ascertain whether such a violation was intentional or not. The breach of a civil obligation which attracts a penalty under the provisions of an Act would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not.”

60. In respect of proposal of imposition of penalty under Section 114AA of the Customs Act, 1962, it has been contended that –

60.1 they had not used any false or incorrect material for importing the product in question. However, the evidences on record show that M/s. PIPL, the importer-noticees and its Directores/ representatives knowingly and intentionally mis-declared the import goods by way of false or incorrect declarations, in material particular, for the purposes of evasion of import duties under the Customs Act, 1962.

60.2. I find that they produced import documents viz. invoices, Bills of Lading etc. containing only brand names and not the actual description of the goods. Thus, I find that the documents used by them for clearance of the goods contained false information in respect of description.

60.3. From the statement of Shri Krishna Kumar, I find that Shri K.C. Goyal had asked him to remove the word “reactor wax” from the manufacturing process. Considering these facts, I find that they are also liable to penalty under Section 114AA of the Customs Act, 1962.

60.4. The goods were comingled in the storage tanks No. IMC 113 on the instructions of the Directors of M/s. PIPL. Shri Shivrul Goyal and Shri K.C. Goyal, Directors of M/s. PIPL, and they played a key role in mis-declaration of

the goods. Thus, I find that they were aware of the nature of the cargo and its correct classification. They were involved in carrying, removing, depositing, selling and dealing with the subject goods. All these actions rendered goods liable to confiscation under Section 111(j) and 111(m) of Customs Act, 1962.

60.5. Shri K. C Goyal had tried to influence M/s Sasol for the purpose of evasion of duty and he had caused to be made/ signed the documents which were false and incorrect in material particulars, in the transaction of business for the purposes of the Customs Act by asking Shri Krishna Kumar, Director of M/s. Apratim International to get the words “reactor wax” removed from the manufacturing process of M/s. Sasol.

60.6. Shri Shivlal Goyal and Shri K.C. Goyal, Directors of M/s. PIPL were also aware and concerned in clearing the comingled warehoused goods without obtaining order from the proper officer and involved in violation of erstwhile Section 62(2), Section 68(c) and 71 of Customs Act, 1962. Summons dated 10.06.2019 issued to Shri Shivlal Goyal and Shri K.C. Goyal, Directors of M/s PIPL under the provisions of section 108 of the Customs Act, 1962 but they avoided appearance before the investigating officer and thereby, they have violated the provisions of section 108 of the Customs Act, 1962.

60.7. Hence M/s. PIPL are liable to a penalty under Section 114AA of Customs Act, 1962.

60.8. By their acts, as stated above, Shri Shivlal Goyal and Shri K.C. Goyal, both the Directors of M/s. PIPL have become liable to penalty under Section 114AA *ibid*.

FINDING IN RESPECT OF M/s. RISHI KIRAN ROADLINES

61. It is alleged that the M/s. Rishi Kiran Roadlines were well aware about the nature and specifications of the goods imported by M/s. PIPL. They were also well aware about the comingling of the imported goods having different description, value etc. However, they failed to bring the same to the notice of Customs Authorities. They failed to advise their clients regarding the correct classification of the subject goods while claiming exemption from duty under classification under CTH 2710. Thus, the CHA/ CB did not fulfill the obligations as casted upon them under Regulation 11 of CBLR, 2013 read with Regulation 10 CBLR, 2018. The Customs Broker firms(M/s. Rishi Kiran Roadlines and M/s. Rishi Kiran Logistics Pvt. Ltd.) have acted as agent of M/s. PIPL, to clear the consignments of mis-classified subject goods, which they knew or had reason to believe were liable to confiscation under Section 111(j) and 111(m) of Customs Act, 1962. They were involved in dealing with the subject goods which

were liable to confiscation under Section 111(j) and 111(m) of the Customs Act, 1962. Therefore, I find that they are liable to penal action under the provisions of Section 112(a), 112(b), Section 114AA and Section 117 *ibid*.

The Bills of Entry were filed on the basis of the import documents and after due approval of the importer and were subjected to the scrutiny by the proper officers. The nature of the imported goods, covered under present proceeding are such that mere visual inspection of the imported goods is not sufficient to identify the correct nature/ characteristic/ type/ class of the goods, but it is imperative to carry out chemical analysis to arrive at correctness of the nature and characteristic of the goods. Therefore, initial assessments were being conducted provisional, on account of one of reason, amongst other reasons, that after due chemical test the assessment can be finalized.

I find that separate show cause notice was issued to M/s. Rishi Kiran Roadlines under the Customs Broker Licensing Regulations and a separate inquiry was conducted against above them. The subject issue involving same charges in respect of the same goods and classification thereof was squarely covered in those proceedings also. I find that after the conclusion of inquiry the adjudicating authority therein passed O.I.O No. KND-CUSTM-000-COM-03-2020-21 dated 04.09.2020. In that order the said adjudicating authority has observed that:

4.8.4.4 Now, I proceed to examine as to whether the CB had any role in mis-classification of the imported goods. The CB based on documents such as invoices, analysis report of exporter/supplier and other documents for filing of bill(s) of entry received from the importer M/s PIPL, prepared details to be used for filing of bill of entry, wherein claimed the imported goods to be classified under CTH 2710 1990 of the Customs Tariff and forwarded to M/s PIPL for approval. On receipt of due approval from importer, the CB filed warehoused Bill of Entry which was assessed provisionally by the proper officer of the customs. On the other hand Ex bond Bill(s) of Entry was/were also filed for clearance of imported goods from warehouse under CTH 2710 1990 of the Customs Tariff, which were also assessed by the proper officer of customs. The nature of imported goods is such that visual inspection of the imported goods, for which it is imperative to carry out chemical test by proper laboratory to arrive at correctness of description and classification of the imported goods. The said process of filing of Bills of Entry for said imported goods carried for years and nothing regarding classification was observed during the period since 1998. During the period two Bills of Entry filed by the CB were finally assessed under CTH 2710 1990 of the Customs Tariff as claimed in the Bills of Entry with regard to said imported goods. Since 1998 to 2015, the classification of the imported goods were accepted under CTH 2710 1990 of the Customs Tariff. It is only in the year of 2015, the DRI based on intelligence conducted investigation on the classification of the imported goods and the process to arrive at correct classification took almost four years upto 2019, which includes various tests, technical opinion, technical literature, inquiry with international agencies etc. Thus, in light of the facts and circumstances

of the present case, I do not find that the CB had pre knowledge that the said imported goods were being mis-classified in the Bills of Entry filed by the CB on behalf of the Importer M/s PIPL for a continuous long period.

The said order has been accepted by the Department.

In view of above facts, I find that actual nature of goods could be ascertained only after detailed investigation and chemical analysis on various counts. On the basis of such details only, actual classification could be ascertained. There is no evidence that as Customs Broker, M/s. Rishi Kiran Roadlines were aware of all these details of the goods and also actual classification thereof. Therefore, I find no force in the allegation against them

FINDING IN RESPECT OF M/s. IMC LIMITED:

62. It is alleged in the notice that M/s. IMC Ltd., being a public warehouse (liquid terminals), was custodian for storage of goods imported by M/s. PIPL and their group company M/s. Kutch Chemical Industries Pvt. Ltd. The importers M/s. PIPL in connivance with M/s. IMC Ltd., and CHA/ CB were storing their imported goods with the different imported goods imported by different companies in the same storage tanks. This co-mingling of different type of imported goods resulted in coming into being/manufacturing of a different product. Further, in this case, when one specific product was given out of charge and another different product in comingled state is cleared with the declared and out of charged goods, the clearance of such different product (which was not given out of charge) was taking place without order of the Proper Officer. This act was violation of provisions of erstwhile Section 62(2), Section 68(c) and 71 of Customs Act, 1962. M/s. IMC Ltd. knowingly involved in this offence and contravention of provisions of Customs Act, 1962. M/s. IMC Ltd. or the importer had not obtained permission of manufacturing under section 65 of Customs Act, 1962. The acts of omission and commission on the part of M/s. IMC Ltd., they are liable to penalty under Section 73A(3) of the Customs Act, 1962. Further, M/s. IMC Ltd. have removed the dutiable goods other than the goods for which the clearance was sought from a warehouse without permission of the proper officer violating the provisions of Customs Act, 1962, and hence, they were engaged in possession, removal, dealing with the subject goods and have rendered such goods liable for confiscation under Section 111(j) of Customs Act, 1962. M/s. IMC Ltd. is thus further liable to penalty under Section 112(a) and 112(b) of Customs Act, 1962. They are also liable for action under Section 58B of the Customs Act, 1962 for their act.

62.1 I find that Shri Devendra Dadhich, Terminal Manager of M/s. IMC Ltd. has stated in his statement dated 03.02.2016 that two tanks, i.e., 201 and 113 were hired by M/s. PIPL and Kutch Chemicals Ltd. sometimes they used to comingle their imported materials having different descriptions. Such

handling was done by M/s. IMC Ltd. on the request of importers. If two or more goods were lying comingled in storage tank, delivery from the said comingled material was given by mentioning its description on gate pass as per produced Bill of Entry. M/s. IMC Ltd. did not have any facility for separation of the comingled cargo. They used to deliver the cleared quantity from the comingled cargo and used to mention description on the gate passes as per out of charge Bill of Entry. The imported consignments were comingled by the importers and clearance was obtained by them through their appointed Customs Broker, and IMC Ltd. Were aware of the same. Shri Dadhidh further submitted that if goods were delivered without out of charge then it is in violation of section 62(2), 68(C) and 71 of the Customs Act, 1962.

62.2 I find that the Chemical Examiner Grade-II, CRCL, New Delhi vide Test Reports C.No.35-CRCL/2015/CL-40/DRI/14.9.15 dated 13.10.2015 (RUD No. 6) with respect to the representative samples for the imported goods stored in Tank No. 205 reported the test results in respect of mineral hydrocarbon oil content (% by mass)= 15.0. However, as regards the Test Memo No. 60/2015-16 dated 03.09.2015 which was meant for representative sample pertaining to import goods stored in Tank No. 113, in which comingled cargo of n-Paraffin and Waksol C 9-11 was stored, the Chemical Examiner Grade-II, CRCL, New Delhi vide Test Reports C.No. 35-CRCL/2015/CL-418 DRI/14.10.15 dated 17.11.2015 (RUD No. 7) has reported that the sample under reference was composed of mineral hydrocarbon oil of more than 70% by weight. From these facts, I find that after comingling of the goods (Waksol C 9-11 and n-paraffin), the chemical properties of the products got altered. If M/s. IMC Ltd. had not allowed the importers to comeingle the goods of different description in the tank No. 113, the chemical examiner could easily test the oil content of the goods for the sample drawn from tank No. 113.

62.3.1 I find that M/s. IMC Ltd. had given NOC for storage of goods of other importers in tank No. 113, infact this tank was hired by M/s. PIPL, as stated by Shri Shivlal Goyal, Director of M/s. PIPL in his statement. (RUD No.23). The section 62(2) (before dated 14.05.2016) casted the responsibility on the warehouse that no person shall enter a warehouse or remove any goods there from without the permission of the proper officer. However, in the instant case, M/s. IMC Ltd. allowed comingling of goods of different description and of different importers in warehouse. When one product was given out of charge and another different product in comingled state was also cleared, the clearance of such different product, which was not given out of charge, was cleared from warehouse without order of the Proper Officer. This fact has also been admitted by Shri Shivlal Goyal and Shri K C Goyal in their statements.

62.3.2 Shri Devendra Dadhich, Terminal Manager has also stated that sometimes imported material having different description were also comingled in the storage tanks by the importers. Such handling was done by them on the request of the importers. Thus, M/s. IMC Ltd. had contravened the provisions of erstwhile section 62(2) (omitted w.e.f 14.05.2016) of the Customs Act, 1962. Above act of M/s. IMC Ltd. made the goods liable for confiscation under section 111(j) of the Customs Act, 1962. Therefore, M/s. IMC Ltd. are liable to penalty under Section 112(a) of the Customs Act, 1962.

62.4 I further find that M/s. IMC Ltd. had allowed the importer-noticees to comingle the goods in warehouse. By mixing the two or more goods in tank No. 113 resulted into change of its property. In the instant case M/s. IMC Ltd. has allowed the importer-noticees to mix Waksol C 9-11 and n-paraffin in tank No. 113. Waksol C9-11 and n-paraffin have different chemical properties and different oil content by mass. When these goods mixed together, a new product is generated. This activity amounts to manufacture. I find that M/s. IMC Ltd. had not obtained permission of manufacturing at their warehouse as provided under section 65. Thus, I find that M/s. IMC Ltd. has violated the provisions of section 65 of the Customs Act, 1962. I further find that M/s. IMC Ltd has allowed the goods for home clearance for which the no order for clearance of goods has been made by the proper officer. They used to deliver the cleared quantity from the comingled cargo and used to mention description on the gate passes as per out of charged Bill of Entry. However, the other imported goods were also cleared under the said gate pass for which no out of charge had been given by the proper officer. M/s. IMC Ltd. was responsible for safe custody of the warehoused goods. Thus, I find that M/s. IMC Ltd. had contravened the provisions of section 68, 71 and 72 of the Customs Act, 1962. This act of M/s. IMC Ltd. had made the goods liable for confiscation under under section 111(j) of the Customs Act, 1962, and therefore, M/s. IMC Ltd. are liable to penalty under Sections 73A(3), 112(a) and 112(b) of the Customs Act, 1962.

63. Further, I am of the view that the conclusions arrived may be true in judicial decisions relied upon by the above noticees, but the same cannot be extended to other cases without looking to the hard realities and specif facts of each case. Those decisions/ judgments are delivered in different contexts and under different facts and circumstances, which cannot be made applicable in the facts and circumstances of this case. However, while applying the ratio of one case to that of the other, the decision of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of CCE, Calcutta Vs. Al Noori Tobacco Products [2004(170)ELT135(SC)] has

stressed the need to discuss, how the facts of decisions relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgment in the case of Escorts Ltd. Vs. CCE, Delhi [2004(173)ELT113(SC)] wherein it has been observed that one additional of different fact may make difference between conclusion in two cases, and so, disposal of case by blindly placing reliance on a decision is not proper. Again in the case of CC (Port), Chennai Vs. Toyota Kirlosker [2007(2013)ELT4(SC)], it has been observed by the Hon'ble Supreme Court that the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to be culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced therefrom.

64. In view of the above, I hereby pass the following order:

ORDER

ORDER IN RESPECT OF M/s. PANOLI INTERMEDIATES (INDIA) PVT. LTD.

- (a) I reject the classification under tariff item 27101990, claimed by them under Bills of Entry mentioned in Annexure-B to the Supplementary Notice and also reject the classification under tariff item 27129030/40 as claimed by them during the adjudication proceedings and order to classify the imported goods, i.e. Waksol A/Waksol B under tariff item 34049039 and Waksol 9-11A/ Waksol 9-11B etc. under tariff item 34052000 of first schedule of the Customs Tariff Act, 1975. The total quantity of such goods imported under various Bills of Entry as stated in Annexure-B to the Supplementary Notice is 15406.63 MT (10199.836 MT imported at Kandla and 5206.798 MT imported at Hazira), totally valued at Rs.62,79,42,514/- (Rs.45,65,01,757/- for Kandla and Rs.17,14,40,757/- for Hazira).
- (b) I order to demand and recover the differential duty amount aggregating to **Rs.4,07,61,433/-** (Rs.1,97,94,219/- for Kandla and Rs.2,09,67,214/- for Hazira), payable on import of Waksol A/ Waksol B/ Waksol 9-11A/Waksol 9-11B etc. totally valued at Rs.62,79,42,514/-, as detailed in Annexure-B to the Supplementary Notice, under Section 28(4) of the Customs Act, 1962 along with interest at appropriate rate under Section 28AA of the Customs Act, 1962.
- (c) I hold the goods, viz., Waksol A/ Waksol B/ Waksol 9-11A/ Waksol 9-11B etc. having total quantity of 15406.63 MT (10199.836 MT imported at Kandla and 5206.798 MT imported at Hazira), totally valued at Rs.62,79,42,514/- (Rs.45,65,01,757/- for Kandla and Rs.17,14,40,757/- for Hazira), liable for confiscation under section 111(j) and 111(m) of the Customs Act, 1962. However, I give them an option to redeem the said goods on payment of redemption fine of Rs. **5,00,00,000/-** (Rupees Five Crores only) under Section 125 of the Customs Act, 1962.
- (d) I impose penalty of **Rs. 4,07,61,433/-** (Rupees Four Crore Seven Lakh Sixty One Thousand Four Hundred Thirty Three only) **plus interest** thereon on M/s. Panoli Intermediates (India) Pvt. Ltd, under section 114A of the Customs Act, 1962.
- (e) I impose penalty of Rs.3,00,00,000/- (Rupees Three Crore only) on M/s. Panoli Intermediates (India) Pvt. Ltd, under section 114AA of the Customs Act, 1962.

(f) I impose penaltyof Rs.4,00,000/- (Rupees Four Lakhs Only) on M/s. Panoli Intermediates (India) Pvt. Ltd, under section 117 of the Customs Act, 1962.

ORDER IN RESPECT OF THE OTHER NOTICEES/ IMPORTERS MENTIONED IN BELOW TABLE 8 and 9:

- (a) I reject the classification under tariff item 27101990, claimed by the importer-noticees under Bills of Entry as mentioned in Annexure-B to the Supplementary Notice and also reject the classification under tariff item 27129030/40 as claimed by them during the adjudication proceedings and order to classify the imported goods, i.e. Waksol A/Waksol B under tariff item 34049039 and Waksol 9-11A/ Waksol 9-11B etc. under tariff item 34052000 of first schedule of the Customs Tariff Act, 1975. The total quantity of such goods imported under various Bills of Entry is 16263.902 MT totally valued at Rs. 57,25,11,438/-.
- (b) I order to demand and recover the the differential duty amount aggregating to **Rs.3,85,79,603/-**(Rs.3,25,47,205/- for Kandla and Rs.60,32,398/- for Hazira), payable on import of Waksol A/ Waksol B/Waksol 9-11A/ Waksol 9-11B etc.. totally valued at Rs.57,25,11,438/-, as detailed in Annexure-B to the Supplementary Notice, under Section 28(4) of the Customs Act, 1962 along with interest at appropriate rate under Section 28AA of the Customs Act, 1962.
- (c) I hold the goods viz. Waksol A/Waksol B/ Waksol 9-11A/ Waksol 9-11B etc. having total quantity of 16263.902 MT and total value of Rs. 57,25,11,438/-as detailed in respective row/column of Table-8 below, liable for confiscation under the provisions of Section 111(j) and 111 (m) of the Customs Act, 1962. However, I give them option to redeem the said goods on payment of redemption fine of amounts as mentioned against their names in the table 8 below, under Section 125 of the Customs Act, 1962.

TABLE-8

| Name of Importer who filed Ex Bond BE | Qty Kandla (MT) | Value Kandla (Rs.) | Qty Hazira (MT) | Value Hazira (Rs.) | Total value (Rs.) | Fine (Rs.) |
|---|-----------------|--------------------|-----------------|--------------------|-------------------|------------|
| Agarwal Chemicals | 487.62 | 21619914.91 | 1200 | 31845759.55 | 53465674.46 | 25,00,000 |
| Ajanta Chemical industries | 0 | 0 | 55.00 | 1458629.12 | 1458629.12 | 75,000 |
| Alwar Paraffin & Allied Products Pvt. Ltd. | 936.298 | 38568341.19 | 331 | 8621398.39 | 47189739.58 | 25,00,000 |
| Amit Plasticizers | 256.197 | 11781123.26 | 81 | 2141730.55 | 13922853.81 | 7,50,000 |
| B.G. Chemicals | 40.00 | 2297750 | 0 | 0 | 2297750 | 1,00,000 |
| Balaji Plasticizers & Chemicals Prop. Balaji Pipe Industries (P) Ltd. | 40.00 | 1105344 | 54.00 | 1445250 | 2550594.01 | 1,25,000 |
| Budhiraja Polymers (P) Ltd. | 0 | 0 | 150 | 3850069.51 | 3850069.51 | 2,00,000 |
| Chloro Paraffin Industries | 179.5 | 5899451.17 | 107 | 2814322.63 | 8713773.8 | 4,50,000 |
| Competent Polymers (P) Ltd. | 0 | 0 | 150 | 3901860 | 3901860 | 2,00,000 |
| Flowtech Chemicals Private Ltd. | 506 | 15787324 | 365 | 9517443 | 25304767 | 12,50,000 |
| Gangotri Chlorochem (P) | 80 | 4045151 | 54 | 1445250 | 5490401 | 2,50,000 |

| | | | | | | |
|---|-----------------|--------------------|-----------------|--------------------|-------------|-------------|
| Ltd. | | | | | | |
| Grasim Industries Limited | 200 | 7048033 | 0 | 0 | 7048033 | 3,50,000 |
| Haryana Chemicals | 0 | 0 | 54 | 1445250 | 1445250.01 | 75,000 |
| Himchem Enterprises | 0 | 0 | 100 | 2652053 | 2652052.95 | 1,25,000 |
| Kutch Chemical Industries Ltd. | 5872.218 | 234018347.2 | 0 | 0 | 234018347.2 | 1,25,00,000 |
| K.G. Industries | 0 | 0 | 392 | 10280472.46 | 10280472.46 | 5,00,000 |
| Madan Chemicals Pvt. Ltd. | 100 | 3663194 | 238 | 6262530 | 9925724.25 | 5,00,000 |
| Orient Micro Abrasive Limited | 560 | 22847478 | 175 | 4573667.59 | 27421145.59 | 14,00,000 |
| Prayag Chemicals Pvt.Ltd. | 21 | 587989 | 82 | 2150675 | 2738663.92 | 1,40,000 |
| R.K. Chemicals | 40 | 2112334 | 88 | 2280926.37 | 4393260.37 | 2,25,000 |
| Sapphire Industrial Products Pvt. Ltd. | 85.911 | 3097107 | 165 | 4242601 | 7339708 | 3,50,000 |
| Shanti Chemicals | 670 | 29337129.19 | 127.873 | 3320353 | 32657482.19 | 15,00,000 |
| Shiva Exim Enterprises | 260.5 | 7961913 | 103 | 2743539 | 10705452 | 5,00,000 |
| Shivtek Industries Private Limited | 234 | 9249624 | 0 | 0 | 9249624 | 4,50,000 |
| Standard Chemicals | 45 | 1286398 | 240 | 6301886 | 7588284 | 3,75,000 |
| Sunil Kumar Nenwani | 0 | 0 | 753 | 19787583 | 19787583 | 10,00,000 |
| Swastik Plasticizer & PVC Pipes Indore Pvt.Ltd. | 156 | 5411697 | 142 | 3733935 | 9145632 | 4,50,000 |
| V.M.A. Enterprises (P) Ltd. | 160 | 4589859.16 | 0 | 0 | 4589859.16 | 2,25,000 |
| V.S.Polymers Pvt. Ltd. | 41 | 1147978 | 86 | 2230773.26 | 3378751.63 | 1,75,000 |
| | 10971.24 | 433463480.6 | 5292.658 | 139047957.4 | 572511438 | |

- (d) I impose penalty under Section 114A of the Customs Act, 1962 on each of them equal to the amounts of differential duties mentioned against their names in the Table-9 below plus amounts of interests on such respective amounts.
- (e) I impose penalty under Section 114AA of the Customs Act, 1962 on each of them as mentioned in the table 9 below:

TABLE 9

| Sr. No. | Name of the importer/ Noticee | Total QTY (MT) | Total value (Rs.) | Differential Duty for import at Kandla (Rs.) | Differential Duty for import at Hazira (Rs.) | Total Differential Duty (Rs.) | Penalty under section 114AA(Rs.) |
|---------|--|----------------|-------------------|--|--|-------------------------------|----------------------------------|
| 1 | Agarwal Chemicals | 1687.62 | 53465674.46 | 1434033 | 1381583 | 2815616 | 12,50,000 |
| 2 | Ajanta Chemical Industries | 55 | 1458629.12 | 0 | 63280 | 63280 | 37,500 |
| 3 | Alwar Paraffin & Allied Products Pvt. Ltd. | 1267.3 | 47189739.58 | 1608410 | 374027 | 1982437 | 12,50,000 |

| | | | | | | | |
|----|---|---------|-------------|----------|--------|----------|-----------|
| | | | | | | | |
| 4 | Amit Plasticizers | 337.197 | 13922853.81 | 477459 | 92916 | 570375 | 3,75,000 |
| 5 | B.G. Chemicals | 40 | 2297750 | 86151 | 0 | 86151 | 50,000 |
| 6 | Balaji Plasticizers & Chemicals Prop. Balaji Pipe Industries (P) Ltd. | 94 | 2550594.01 | 47953 | 62700 | 110653 | 62,500 |
| 7 | Budhiraja Polymers (P) Ltd. | 150 | 3850069.51 | 0 | 167030 | 167030 | 1,00,000 |
| 8 | Chloro Paraffin Industries | 286.5 | 8713773.8 | 255938 | 122095 | 378033 | 2,25,000 |
| 9 | Competent Polymers (P) Ltd. | 150 | 3901860 | 0 | 169277 | 169277 | 1,00,000 |
| 10 | Flowtech Chemicals Private Ltd. | 871 | 25304767 | 684910 | 412900 | 1097810 | 6,25,000 |
| 11 | Gangotri Chlorochem (P) Ltd. | 134 | 5490401 | 175493 | 62700 | 238193 | 1,25,000 |
| 12 | Grasim Industries Ltd. | 200 | 7048033 | 305769 | 0 | 305769 | 1,75,000 |
| 13 | Haryana Chemicals | 54 | 1445250.01 | 0 | 62700 | 62700 | 37,500 |
| 14 | Himchem Enterprises | 100 | 2652052.95 | 0 | 115056 | 115056 | 62,500 |
| 15 | Kutch Chemical Industries Ltd. | 5872.22 | 234018347.2 | 23567848 | 0 | 23567848 | 62,50,000 |
| 16 | K.G. Industries | 392 | 10280472.46 | 0 | 446004 | 446004 | 2,50,000 |
| 17 | Madan Chemicals Pvt. Ltd. | 338 | 9925724.25 | 158922 | 271691 | 430613 | 2,50,000 |
| 18 | Orient Micro Abrasive Limited | 735 | 27421145.59 | 991205 | 198423 | 1189628 | 7,00,000 |
| 19 | Prayag Chemicals Pvt. Ltd. | 103 | 2738663.92 | 25509 | 93304 | 118813 | 70,000 |
| 20 | R.K. Chemicals | 127.785 | 4393260.37 | 91640 | 98955 | 190595 | 1,00,000 |
| 21 | Sapphire Industrial Products Pvt. Ltd. | 250.911 | 7339708 | 134364 | 184059 | 318423 | 1,75,000 |
| 22 | Shanti Chemicals | 797.873 | 32657482.19 | 1215389 | 144049 | 1359438 | 7,50,000 |
| 23 | Shiva Exim Enterprises | 363.5 | 10705452 | 345416 | 119024 | 464440 | 2,50,000 |

| | | | | | | | |
|----|--|-----|------------|----------|---------|----------|----------|
| 24 | Shivtek Industries Private Limited | 234 | 9249624 | 401281 | 0 | 401281 | 2,25,000 |
| 25 | Standard Chemicals | 285 | 7588284 | 55808 | 273399 | 329207 | 2,00,000 |
| 26 | Sunil Kumar Nenwani | 753 | 19787583 | 0 | 858455 | 858455 | 5,00,000 |
| 27 | Swastik Plasticizer & PVC Pipes Indore Pvt. Ltd. | 298 | 9145632 | 234779 | 161991 | 396770 | 2,25,000 |
| 28 | V.M.A. Enterprises (P) Ltd. | 160 | 4589859.16 | 199125 | 0 | 199125 | 1,00,000 |
| 29 | V.S. Polymers Pvt. Ltd. | 127 | 3378751.63 | 49803 | 96780 | 146583 | 50,000 |
| | Total | | | 32547205 | 6032398 | 38579603 | |

ORDER IN RESPECT OF M/s. IMC LTD.,

- (a) I impose penalty of Rs.4,00,000/- (Rupees Four Lakhs only) on M/s. IMC Ltd., under Section 73A(3) of the Customs Act, 1962.
- (b) I impose penalty of Rs.20,00,000/- (Rupees Twenty Lakhs only) on M/s. IMC Ltd., under Section 112(a) and 112(b) of the Customs Act, 1962.

ORDER IN RESPECT OF SHRI SHIVLAL GOYAL AND SHRI K. C GOYAL, DIRECTORS OF M/s. PANOLI INTERMEDIATES (INDIA) PVT. LTD.

- (a) I impose penalty of Rs.10,00,000/- (Rupees Ten Lakhs only) on Shri Shivlal Goyal, under Sections 112(a) and 112(b) of the Customs Act, 1962.
- (b) I impose penalty of Rs. 10,00,000/- (Rupees Ten Lakhs only) on Shri Shivlal Goyal, under Section 114AA of the Customs Act, 1962.
- (c) I impose penalty of Rs.1,00,000/- (Rupees One Lakh only) on Shri Shivlal Goyal, under Section 117 of the Customs Act, 1962.
- (d) I impose penalty of Rs. 10,00,000/- (Rupees Ten Lakhs only) on Shri K C Goyal, under Sections 112(a) and 112(b) of the Customs Act, 1962.
- (e) I impose penalty of Rs.10,00,000/- (Rupees Ten Lakhs only) on Shri K C Goyal, under Section 114AA of the Customs Act, 1962.
- (f) I impose penalty of Rs.1,00,000/- (Rupees One Lakh only) on Shri K C Goyal, under Section 117 of the Customs Act, 1962.

ORDER IN RESPECT OF M/s. RISHI KIRAN ROADLINES

I drop the proceedings against M/s. RISHI KIRAN ROADLINES

(M.RAMMOHAN RAO)
COMMISSIONER

By RPAD/ By Hand Delivery/Email/Speed Post

To **(Noticees)**,

- (i) M/s. Panoli Intermediates (India) Pvt. Ltd.,
105, Mohata Building, 4, Bhikaji Cama Palace,
New Delhi-110066

Corporate office at 'Sara Niwas', 20-21,
Harinagar Co-Operative Society, Gotri Road,
Vadodara -390007
- (ii) Shri Shivlal Goyal, Director,
M/s. Panoli Intermediates (India) Pvt. Ltd.,
Corporate office at 'Sara Niwas', 20-21,
Harinagar Co-Operative Society, Gotri Road,
Vadodara -390007
- (iii) Shri K.C. Goyal, Director,
M/s. Panoli Intermediates (India) Pvt. Ltd.,
Corporate office at 'Sara Niwas', 20-21,
Harinagar Co-Operative Society, Gotri Road,
Vadodara -390007
- (iv) M/s. Rishi Kiran Roadlines,
Plot No. 8, Sector-8,
Gandhidham
- (v) M/s. IMC Ltd., Near IOC Foreshore, Terminals,
Opp.- Shirva Railway Crossing, New Kandla-370210
- (vi) M/s. Agarwal Chemicals,
105, Mohta Building-4, Bhikaji Cama Place
New Delhi, Pin-110066
- (vii) M/s. Ajanta Chemical Industries,
1001, 10th Floor, Aggarwal Corporate-Heights, Netaji Subhash Place,
Pitampura, Delhi, PIN-110034
- (viii) M/s. Alwar Paraffin & Allied Products Pvt. Ltd.
120, 1st Floor, Allied House, Inder Lok
Delhi, Pin-110035
- (ix) M/s. Amit Plasticizers,
1-D, Kamla Nagar,
Delhi, Pin-110007
- (x) M/s. B.G. Chemicals,
F-310 M.I.A
Alwar, Rajasthan
Pin-301030
- (xi) M/s. Balaji Plasticizers & Chemicals Prop. Balaji Pipe Industries (P)
Ltd.,
4519/11 Jai Mata Market, Tri Nagar
Delhi, Pin-110035

- (xii) M/s. Budhiraja Polymers (P) Ltd.,
3151, Sector 27-D, Chandigarh.
Pin-160019
- (xiii) M/s. Chloro Paraffin Industries (0503029068)
I-D, Kamla Nagar, Delhi
Pin-110007
- (xiv) M/s. Competent Polymers (P) Ltd.
11,Panchkuianroad,
New Delhi, Pin-110001
- (xv) M/s. Flowtech Chemicals Private Ltd
314, P.P. Towers, Plot No C-1,2,3,
Netaji Subhash Place Pitampura
Delhi, Pin-110034
- (xvi) M/s. Gangotri Chlorochem (P) Ltd.,
J-17 & 18, Industrial Area
Sikandrabad, Bulandshahr
Pin-113766
- (xvii) M/s. Grasim Industries Ltd.
Birlagram, Nagda,
Madhya Pradesh
Pin-456331
- (xviii) M/s. Haryana Chemicals
Sara Niwas, 20-21 Harinagar
Society, Gotri Road,
Baroda, Pin-390007
- (xix) M/s. Himchem Enterprises
Sara Niwas, 20-21 Harinagar Society
Gotri Road, Baroda
Pin-390007
- (xx) M/s. Kutch Chemical Industries Ltd
108, Mohta Bldg., 4 Bhikaji Cama P.,
New Delhi,
Pin-110066
- (xxi) M/s. K.G. Industries.,
4521/11, Jai Mata Market, Tri Nagar,
Delhi, Pin-110035
- (xxii) M/s. Madan Chemicals Pvt. Ltd.,
A-29, Lajpat Nagar-2, First Floor,
New Delhi, Pin-110024
- (xxiii) M/s. Orient Micro Abrasive Limited,
4519/11, Jai Mata Market, Tri Nagar
Delhi, Pin-110035
- (xxiv) M/s. Prayag Chemicals Pvt. Ltd.,
314,P.P.Tower, Netaji Subhash Place,
Pitampura, Delhi
Pin-110034
- (xxv) M/s. R. K. Chemicals
III-F/283A, Nehru Nagar
Ghaziabad
Pin-201001

- (xxvi) M/s. Sapphire Industrial Products Pvt. Ltd.,
430, Industrial Area,
Phase-II, Ram Darbar,
Chandigarh. Pin-160002
- (xxvii) M/s. Shanti Chemicals
Pansari Bazar
Alwar, Rajasthan
Pin-301001
- (xxviii) M/s. Shiva Exim Enterprises
802-804, Pearl Best Height Tower-II
Netaji Subhash Place, Pitampura
Delhi, Pin-110034
- (xxix) M/s. Shivtek Industries Private Limited
802-804, Pearl Best Height, Tower - II, Nsp, Pitampura
Delhi,
Pin-110034
- (xxx) M/s. Standard Chemicals
Vill. Sundra, Derabassi,
Punjab,
Pin-140507
- (xxxii) M/s. Sunil Kumar Nenwani
35, H4/5, Suvidha Kunj
Pitampura, Delhi
Pin-110034
- (xxxiii) M/s. Swastik Plasticizer & PVC Pipes Indore Pvt. Ltd.
Plot 23-24,,Sector II
Pithampur Industrial Area, Madhya Pradesh
Pin-454775
- (xxxiiii) M/s. V.M.A. Enterprises (P) Ltd.
50, Samrat Apartment, Vasundhra
Enclave, New Delhi
Pin-110096
- (xxxv) M/s. V.S. Polymers Pvt. Ltd.
315, P.P. Tower, Netaji Subhash
Place ,Pitampura, Delhi
Pin-110034

Copy to:-

1. The Chief Commissioner of Customs, CCO, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House Ahmedabad.
3. The Pr. Additional Director General, Directorate of Revenue Intelligence, Ahmedabad.
4. The Additional Director, DRI, Regional Unit, Plot No. 193, OSLO, Sector 4, Gandhidham.
5. The Assistant Commissioner (TRC), Custom House, Kandla.
6. The Deputy Commissioner (Assessment Gr.-I), Custom House, Kandla.
7. The Deputy Commissioner (Bond), Custom House, Kandla.
8. The Deputy Commissioner (Legal), Custom House, Kandla.
9. Guard File.