



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद  
सीमा शुल्क भवन, आल इंडीया रेडीओ के बाजु में, नवरंगपुरा, अहमदाबाद 380009  
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**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD  
CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD  
380009**

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**निबन्धित पावती डाक द्वारा / By SPEED POST A.D.**

फा. सं./ F. No.: F.No.VIII/10-02/Commr./O&A/2022-23

**DIN- 20240771MN000000EB13**

आदेश की तारीख/Date of Order : 19.07.2024  
जारी करने की तारीख/Date of Issue : 19.07.2024

द्वारा पारित/Passed by:-

शिव कुमार शर्मा, प्रधान आयुक्त  
**Shiv Kumar Sharma, Principal Commissioner**

मूल आदेश संख्या :

**Order-In-Original No: AHM-CUSTM-000-PR.COMMR-33-2024-25  
dated 19.07.2024 in the case of M/s. Shivtek Industries Private  
Limited, CH-1 & CH-2/C, GIDC, Dahej, Tehsil- Vagra, Distt-  
Bharuch, Gujarat- 392130 having Corporate Office at 802-804,  
Pearl Best Height II Netaji Subhash Place, Pitampura, Delhi  
110034.**

- जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।  
1. This copy is granted free of charge for private use of the person(s) to whom it is sent.
- इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंजिल, बहुमाली भवन, गिरिधर नगर पुल के बाजु में, गिरिधर नगर, असारवा, अहमदाबाद-380 004 को सम्बोधित होनी चाहिए।  
2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad – 380004.

3. उक्त अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियाँ में अग्रेषित किए जाने चाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।

4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. केंद्रीय सीमा शुल्क अधिनियम, 1962 की धारा 129 ए के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. इस आदेश के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्ष जुरमाना के बारेमें विवाद है उसका भुक्तान करके अपील की जा शकती है।

7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".

8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।

8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

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Sub: Show Cause Notice F.No.VIII/10-02/Commr./O&A/2022-23 dated 14.02.2023 issued to M/s. Shivtek Industries Private Limited, CH-1 & CH-2/C, GIDC, Dahej, Tehsil- Vagra, Distt- Bharuch, Gujarat- 392130 having Corporate Office at 802-804, Pearl Best Height II Netaji Subhash Place, Pitampura, Delhi 110034 (IEC No. 0500001448) by the Commissioner of Customs, Ahmedabad.

**Brief facts of the case:**

**M/s. Shivtek Industries Private Limited** (IEC No. 0500001448), CH-1 & CH-2/C, GIDC, Dahej, Tehsil- Vagra, Distt- Bharuch, Gujarat- 392130 having Corporate Office at 802-804, Pearl Best Height II Netaji Subhash Place, Pitampura Delhi 110034 (hereinafter also referred to as "M/s Shivtek" or "the Noticee" or "the Importer" for the sake of brevity) is engaged in the import of goods under declared trade name as "Waksol 9-11A Grade". They were classifying this product under Customs Tariff Heading No.27101990 of the Customs Tariff Act, 1975 and paying Customs Duty accordingly.

2. Intelligence gathered by the Directorate of Revenue Intelligence, Regional Unit, Gandhidham (hereinafter referred to as "DRI") suggested that goods imported by some Importers declared as "Waksol 9-11A Grade" under Customs Tariff Heading No.2710 was actually classifiable under Customs Tariff Heading No.3405 and attracted higher rate of Duty. Based on the said intelligence, live consignment of imported "Waksol 9-11A Grade" supplied by M/s Sasol Chemical, South Africa and imported at Adani Hazira Port by one of the Importers M/s. Shivtek Industries Private Limited, CH-1 & CH-2/C, GIDC, Dahej, Tehsil- Vagra, Distt- Bharuch, Gujarat under Bill of Entry 3979553 dated 08.07.2019 was placed on hold after drawal of representative samples from the consignment under Panchnama dated 18.07.2019 by the Officers of DRI in presence of independent panchas. The copy of Panchnama dated 18.07.2019 drawn at Adani Hazira Port Pvt. Ltd. by the officers of DRI and Test Report of Customs House Laboratory, Kandla [Test Memo No.03/2019-20 dated 22.07.2019] in respect of sample drawn under Panchnama dated 18.07.2019 were thereafter transferred by DRI to Customs Commissionerate, Ahmedabad vide Letter F.No.DRI/AZU/GRU/INT-07/KLJ/2019 dated 13.08.2019 of the Assistant Director, DRI, Regional Unit, Gandhidham for making further necessary investigation.

3. M/s. Shivtek filed Bill of Entry No.3979553 dated 08.07.2019 at Adani Hazira Port for clearance of goods supplied by M/s. Sasol Chemical, South Africa and declared the description of goods as Waksol 9-11A Grade. M/s Shivtek classified the said goods under Customs Tariff Heading No.27101990 and claimed benefit of Sr.No.147 of Notification No.50/2017-Cus dated 30.06.2017. The Customs Tariff Heading No.27101990 of the Customs Tariff Act, 1975 under which M/s. Shivtek declared the goods i.e. Waksol 9-11A Grade is reproduced as under:-

i- *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, other than those containing biodiesel and other than waste oils:*

**2710 19 -- Other:**

<b><i>Chapter Head</i></b>	<b><i>Description</i></b>	<b><i>Unit</i></b>	<b><i>Rate of duty</i></b>
2710 19 10	Superior kerosene oil (SKO)	Kg	10%
2710 19 20	Aviation turbine fuel	Kg	10%

	(ATF)		
2710 19 30	High speed diesel (HSD)	<i>Kg</i>	10%
2710 19 40	Light diesel oil (LDO)	<i>Kg</i>	10%
2710 19 50	Fuel oil	<i>Kg</i>	10%
2710 19 60	Base oil	<i>Kg</i>	10%
2710 19 70	Jute batching oil and textile oil	<i>Kg</i>	10%
2710 19 80	Lubricating oil	<i>Kg</i>	10%
<b>2710 19 90</b>	<b>Other</b>	<b><i>Kg</i></b>	<b>10%</b>

4. As discussed above, the representative sample from the consignment imported under Bill of Entry 3979553 dated 08.07.2019 was drawn under Panchnama dated 18.07.2019 at Adani Hazira Port Pvt. Ltd. by the Officers of DRI in presence of independent Panchas. The representative sample drawn under Panchnama dated 18.07.2019 from the goods declared under Bill of Entry No.3979553 dated 08.07.2019 was forwarded to Customs House Laboratory, Kandla by DRI for testing vide Test Memo No.03/2019-20 dated 22.07.2019. In the above mentioned Test Memo, the following queries/parameters/tests were asked to be performed, to get appropriate classification of the products:-

- (i) What is the composition of Product?
- (ii) Whether the product obtained by the Industrial Treatment of fats, oils or waxes?
- (iii) Oil Content (% by weight).
- (iv) Whether the product is mixture of separate chemically defined compounds?
- (v) What is dropping point of product?
- (vi) What is viscosity of product measured by rotational viscometer at a temperature of 10 degree Celsius above dropping point?
- (vii) Whether at 20 deg centigrade, the product is transparent or translucent?
- (viii) Whether the product is soft or brittle at 20 degree Centigrade?
- (ix) Whether the product can be drawn into threads above its melting point?
- (x) Whether the product takes a polish when gently rubbed?
- (xi) Whether the product is having waxy character?
- (xii) Usage of product; whether the product can be used in polishes, cream and similar preparation for footwear or leather, or maintenance of wooden furniture, floors, or other wood work or coach work. Scouring paste and powders and other scouring preparation.
- (xiii) Any other important information about the product.
- (xiv) Technical opinion of laboratory regarding appropriate classification of the product under Customs Tariff.

5. As requested by the DRI, RU, Gandhidham, the Joint Director, Custom House Laboratory, Kandla submitted Test Report dated 06.08.2019 in respect of Test Memo No.03/2019-20 dated 22.07.2019 of sample drawn under Panchnama dated 18.07.2019 and has given the opinion in respect of classification of goods which is discussed as under.

*"The sample as received is in the form of clear colorless liquid. It is preparation obtained by blending hydrocarbon solvent, oil and Wax, fined used as polishes, where in the hydrocarbon solvent, oil used to improve consistency of the polishes and wax used to impart water proof, wear resistance and other properties of the polishes and such product falls under the chapter 3405.2".*

6. The description of the Customs Tariff Heading No.34052000 is reproduced below:-

**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**

<b>Chapter Head</b>	<b>Description</b>	<b>Unit</b>	<b>Rate of duty</b>
3405 20 00	Polishes, creams and similar preparations for the maintenance of wooden furniture, floors or other wood work	kg	10%

7. The Custom House Laboratory, Kandla confirmed classification of sample of goods drawn from goods declared under Bill of Entry No.3979553 dated 08.07.2019 under Chapter 3405.2. On going through the Test Report of sample provided by Custom House Laboratory, Kandla, it appeared that M/s. Shivtek had wrongly classified the goods under Customs Tariff Heading No.27101990 of the Custom Tariff Act, 1975 with the intent to evade the payment of Customs Duty at higher rate. Since, the said consignment, on examination was found to be mis-classified in terms of the Custom Tariff Act, 1975, the said goods i.e. Waksol 9-11A Grade totally weighing **138.042 MTs (as per stock report) totally valued at Rs.65,28,075/-** imported under Bill of Entry No.3979553 dated 08.07.2019 was detained under Detention Memo dated 17.09.2019 under the provisions of the Customs Act, 1962 on a reasonable belief that the said goods were mis-classified in terms of the Customs Tariff Act, 1975 and were liable to confiscation under the provisions of the Customs Act, 1962. Subsequently, vide Seizure Memo dated 05.10.2019, under panchnama dated 05.10.2019, the above said goods totally valued at **Rs. 65,28,075/-** were seized. Thereafter, on request of the Importer, the said goods were provisionally released to them on execution of Bond of full value of goods backed by Bank Guarantee of **Rs.15,00,000/-**.

8. M/s. Shivtek vide letter dated 27.09.2019 submitted that :

*Waksol 9-11 A Grade has two components and is produced by SASOL CHEMICALS, A DIVISION OF SASOL SOUTH AFRICA (PTY) LTD" at its Sasolburg Plant in South Africa and is fully synthetic originating from natural gas via the fisher-Tropsch process. These two components are:*

1. N-paraffin C9-C11

2. Waksol A

**Manufacturing Process:** Natural gas is reformed into synthesis gas (syngas) which is then through a Proprietary fisher tropesch Process converted to various hydrocarbons which are then distilled into various fractions including Waksol A and N-Paraffin C9-11. The later is hydrogenated to remove unsaturation and oxygenates. Waksol A typically consists of a C10-C30 mixture of linear and branched Paraffins and Olefins with the highest concentration in the C8 to C13 Carbon range. Waksol A has a congealing point of between 26 and 32°C. The product Waksol A is still liquid at room temperature. This product does not meet

the requirement of wax (as per European wax federation definition) since wax requires the congealing point to be greater than 40°C.

Waksol 9-11A Grade is in form of Liquid Hydrocarbon and has flash point of above 48°C and Contains Carbon chain from C8 to C30 as per Certificate of quality of Waksol in Vessel MV Bow Fortunes which came to us recently at Hazira Port vide BL No, 2002/366815 and Voyage No. 201903 in July 2019.

**8.1** A statement of Shri Shiv Kumar Nenwani, Director of M/s. Shivtek Industries Private Limited was recorded under Section 108 of the Customs Act, 1962 on 06.02.2020 which is reproduced as under:-

**“Question No. 01 :Describe in details the business of M/s. Shivtek Industries Private Limited and state how you are associated with the said Company?**

**Answer:-**M/s Shivtek Industries Private Limited is a manufacturing concern engaged in the manufacturing of Chlorinated Paraffin, HCL and sodium hypochlorite. We are clearing these products in both national and international market.

**Questions No. 02:- Please describe the use of imported goods declared as ‘Waksol 9-11 A’.**

**Answer:-**Waksol 9-11A Grade is a proved paraffinic material with more than 98% of paraffinic material which is used in chlorination process for manufacturing of ‘Chlorinated Paraffin Wax (CPW)’ and HCL and sodium hypochlorite are the co-products.

**Questions No. 03:-Have you gone through the Panchnama dated 05.10.2019 drawn at Adani Hazira Port Pvt Ltd, Choryasi, Hazira, Surat, under the goods declared as “Waksol 9-11 A Grade”, imported by you under Bill of Entry No.3979553 dated 08.07.2019 and placed under seizure in view of examination report received on the representative samples drawn vide Panchnama dated 18.07.2019?**

**Answer:** I have gone through Panchnama dated 05.10.2019 drawn at Adani Hazira Port Pvt Ltd., Choryasi, Hazira, Surat, under goods declared as “Waksol 9-11 A Grade”, imported under Bill of Entry No.3979553 dated 08.07.2019. I show full satisfaction with the facts recorded in the panchnama and also agree with the manner in which the facts have been recorded therein. I have also gone through the Panchnama dated 18.07.2019 vide which representative samples of the consignment imported under above mentioned Bill of Entry was drawn and agree with the manner in which samples were drawn and want to state that the goods seized under the said panchnama dated 05.10.2019 were released provisionally by the competent authority on furnishing the Bond for the full value of the goods and Bank Guarantee of Rs.15,00,000/- for the differential Duty.

**Question no. 04:- Please go through the examination report dated 06.08.2019 of Joint Director, Custom House Laboratory, Kandla in respect of declared goods ‘Waksol 9-11A Grade’ imported under Bill of Entry 3979553 dated 08.07.2019 by M/s. Shivtek Industries Private Limited, vide which it is communicated that said product falls under the CTH 3405.2 instead of CTH 2710. What is your Comment?**

**Answer:-**I have gone through the examination report dated 06.08.2019 of Joint Director, Custom House Laboratory, Kandla in respect of declared goods ‘Waksol 9-11A Grade’ imported under Bill of Entry No.3979553 dated 08.07.2019, vide which it is communicated that said product falls under the CTH 3405.2 instead of CTH 2710. In this regard, we do not accept the findings

and the facts mentioned in the said Test Report. The Test Report shown to me appears to be conclusion without indicating any basis that sample sent to them is classifiable under CTH 3405.2 as polishes. Waksol 9-11 A Grade is a mixture of Heavy paraffinic Hydrocarbons which is liquid at room temperature and congealing point of it is less than 20 degree centigrade. As per the European Wax Federation, for Waxes the congealing point has to be greater than 40 degree centigrade. The said product is manufactured by Fisher Tropsch Process and the manufacturing process supplied by Sasol, duly certified by Chamber of Commerce of South Africa, is being produced with this statement. Further HSN Explanatory notes of CTH 3404 clearly mention that waxes produced synthetically or otherwise with a specific example of Fischer Tropsch waxes consisting of hydrocarbon are excluded from CTH 3404 and they fall more appropriately under CTH 2712. Further, the products of CTH 3404 has a dropping point above 40 degree centigrade, meaning thereby that they remain solid upto 40 degree centigrade whereas the dropping point of the Waksol 9-11A Grade is less than 20 degree centigrade and the product is obtained from a synthetic route by Fischer Tropsch process. The product Waksol 9-11A Grade is used for manufacturing of Chlorinated Parafin and cannot be used in polishes as said in the report. Please also refer to our letter 27.09.2019 submitted to your office vide registered post in which our position has been detailed and a copy of the same is being produced again hereunder.

**Question no. 05:- It has been seen that your recent imports of same item i.e., Waksol 9-11A Grade are being classified under 27129030 which is for 'Slack wax'. Why the classification has been changed?**

**Answer:** The classification has now been changed by our supplier M/s Sasol Chemicals, South Africa, therefore, for a homogenous documentation we are now filing the Bill of Entry under the same CTH. I am submitting herewith a printout of case law CLA-2 OT: RR:CTFTCMH080820AMM dated 11.01.2013 of an American Court wherein Paraffins from Fischer Tropsch method which is commercially known as Waksol 9-11A Grade is concluded as to be classifiable in CTH 2712. Further, it is to mention that now our all Bills of Entry of Waksol 9-11A Grade are being assessed provisionally.

**8.2** Shri Shiv Kumar Nenwani, Director of M/s. Shivtek Industries Private Limited also submitted the photo copy of manufacturing process supplied by Sasol, duly certified by Chamber of Commerce of South Africa while recording his statement wherein the manufacturing process 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 hydrocarbon>C20 stream 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, this product is considered a heavy parrafin as it does not meet the European Wax Federation definition of a wax which requires the melting point to be greater than 40oC.*

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

**9.** M/s. Shivtek vide letter dated 27.09.2019 and Shri Shiv Kumar Nenwani, Director of M/s. Shivtek in his statement dated 06.02.2020, have claimed that the product "Waksol 9-11A Grade" is mixture of n-paraffins and Waksol A, which is produced synthetically through Fischer Tropsch process. Further, "Waksol 9-11A Grade" has congealing point between 26 to 32 degree Centigrade. Further, "Waksol 9-11A Grade" is liquid at room temperature and does not meet the requirement of wax, since wax requires congealing point to be greater than 40 degree Centigrade. The Joint Director, Custom House Laboratory, Kandla vide Test Report dated 06.08.2019 has given the opinion regarding classification of "Waksol 9-11A Grade" that it is a preparation obtained by blending hydrocarbon solvent, oil and wax, fined used as polishes, wherein the hydrocarbon solvent, oil used to improve consistency of the polishes and wax used to impart water proof, wear resistance and other properties of the polishes and such product falls under the chapter 3405.2. Moreover, M/s Shivtek declared the classification of "Waksol 9-11A Grade" under Customs Tariff Heading No.27101990 viz. "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", whereas "Waksol 9-11A Grade" imported by M/s. Shivtek is found to contain less than 70.0% oils, which takes the product Waksol 9-11A outside the purview of Customs Tariff Heading No.2710, details of which are discussed in the succeeding paras.

**9.1** Further, apart from M/s. Shivtek, another firm namely M/s. KLJ Resources Limited, Flat No. 111, 1<sup>st</sup> Floor, P. No. 20, Sector-9, Vrindavan Complex, Gandhidham, Kutch, Gujarat (IEC No. 0204011469) also imported the product "Waksol 9-11A Grade" from the same supplier viz. M/s. Sasol Chemical, South Africa at Hazira Port under Bills of Entry No 4035406 dated 12.07.2019 and 4273986 dated 29.07.2019. Both M/s. Shivtek and M/s. KLJ Resources Limited imported the same product i.e. "Waksol 9-11A Grade" in Bulk from the same supplier i.e. M/s. Sasol Chemical, South Africa and in the same vessel i.e. MT Bow Fortune, under same IGM No. i.e. 2228918 dated 08.07.2019 at Adani Hazira Port, Surat.

**9.2** The sample of the product "Waksol 9-11A Grade" imported in same vessel by M/s. KLJ Resources Limited was also drawn along with sample of "Waksol 9-11A Grade" imported by M/s. Shivtek under panchnama dated 18.07.2019 and were sent to the Custom House Laboratory, Kandla vide Test Memo No. 02/2019-20 and 03/2019-20, both dated 22.07.2019. The Joint Director, Custom House Laboratory, Kandla vide Test Report dated 06.08.2019 in respect of both Test Memos No.02/2019-20 and 03/2019-20, both dated 22.07.2019, has given the opinion regarding classification of "Waksol 9-11A Grade" that the product falls under the chapter 3405.2".

**9.3** Further, the sample of "Waksol 9-11A Grade" imported by M/s. KLJ Resources Limited under Bill of Entry No.4273986 dated 29.07.2019 was drawn under panchnama dated 08.08.2019 and were sent to CRCL, Vadodara

vide Test Memo No.02/2019-20 dated 31.12.2019. After testing, the CRCL, Vadodara submitted their Test Report dated 04.02.2020. The report received is reproduced hereunder:

*"The sample is in the form of clear colourless liquid at ambient temp. (24-25 degree C) having following content:*

- i) *Test for instauration* = +ve
- ii) *Flash Point (PMCL)* = 61 degree C
- iii) *Specific gravity at 23 deg C* = 0.7770
- iv) *Distillation Range*  
*IBP* = 140 deg C  
*FBP* = 340 deg C (85% distilled, left residual matter)
- v) *Sample at 20deg C is turbid*
- vi) *Dropping point & rotational viscosity at a temp of 10 deg C above dropping point could not be ascertained for want of facility.*

The Test Report is received without covering detailed report in respect of all points listed in the said Test Memo and without technical opinion for classification of goods.

**9.4** Since the Test Reports received and discussed above were received without covering all the points of the Test Memos dated 22.07.2019 and 31.12.2019, the representative sample drawn from goods imported under Bill of Entry No.4273986 dated 29.07.2019 of M/s. KLJ Resources Limited under panchnama dated 08.08.2019 was sent to the appellate testing authority, i.e. CRCL, New Delhi vide Test Memo No.18/2019-20 dated 02.03.2020 to test various parameters.

**9.5** The Joint Director (NFSG), CRCL, New Delhi vide their letter F.No. 27/Cus/C-48/2019-20 dated 24.07.2020 communicated re-Test Report and point-wise report which is discussed as under:-

*The sample is in the form of colourless oily liquid at room temperature (27°C). It is composed of paraffin wax and n paraffins. It is having following characteristics:-*

<b>Sr. No.</b>	<b>Parameter</b>	<b>Values</b>	<b>Remarks</b>
1	<i>Density at 15°C</i>	0.7843 gm/ml	
2	<i>%n Paraffins below C 18 (by GC) (oil)</i>	38.72	Less than 70%
3	<i>%n Paraffins above C 18 (by GC) (Wax)</i>	61.28	Above 30%
4	<i>Distillation Characteristics</i>  <i>IBP</i> <i>5% Recovery</i> <i>35 % Recovery</i> <i>90% Recovery</i> <i>92% Recovered</i>	164°C 171°C 320°C 357°C 369°C	

**9.6** The Joint Director (NFSG), CRCL, New Delhi finally concluded that as per the above parameters tested, technical literature available/supplied, the sample under reference is a mixture/preparation of paraffin wax with n paraffins having percentage(%) of n-paraffins below C18 (by GC)(Oil) is 38.72 %, hence less than 70%.

**10.** M/s. Shivtek and M/s. KLJ Resources Limited, has declared the description of imported goods as "Waksol 9-11A Grade" and classified it under Customs Tariff Heading No.27101990 viz. 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, other than those containing biodiesel and other than waste oils. However, from the Test Report and point-wise reply submitted by the Joint Director (NFSG), CRCL, New Delhi as discussed above, it appeared that the percentage of oil content in the sample of Waksol 9-11A Grade imported by M/s. KLJ Resources Limited and M/s. Shivtek comes to 38.72% by mass, which was lesser than the basic requirement of classification of a product under Chapter heading 2710 of the Customs Tariff Act, 1975 i.e. 70% by weight. Therefore the product, "WAKSOL 9-11 A" does not fall under Chapter 2710, i.e. from 271012 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%.

**11.** From the various facts and evidences as discussed in the foregoing paras, it appeared that M/s. Shivtek Industries Private Limited, Bharuch, Gujarat is holding IEC No. (IEC No. 0500001448) issued by the DGFT and having Corporate Office at 802-804, Pearl Best Height II, Netaji Subhash Place, Pitampura, Delhi 110034 and was engaged in import of goods declared as "Waksol 9-11A Grade". M/s Shivtek has declared generic description of Waksol 9-11A Grade in the Bills of Entry filed during the period 28.03.2018 to 12.07.2019 as "Waksol 9-11A Grade Bulk" and classified under Customs Tariff Heading No. 27101990 of the Customs Tariff Act, 1975.

**11.1** In view of the discussions in the aforesaid paras, it appeared that the Heading 27.10 of Chapter 27 of the 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. Whereas 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) .....

**11.2** In view of the discussions in aforesaid paras, it appeared that the percentage of oil content was the main factor to decide classification of particular goods under Heading 27.10. In the instant case, the oil content was not available in the Certificate of Quality which was submitted in e-sanchit. The downloaded image of Certificate of Quality submitted by M/s. Shivtek is produced here-under, whereas, by classifying the product under Customs Tariff Heading No. 27101990, M/s. Shivtek declared oil content as 70% or more.

**CERTIFICATE OF QUALITY**

Client	Sasol Chemicals a division of Sasol South Africa (Pty) Limited		
Client Address	P O Box 1 Sasolburg 1947		
Product	302.815 MT OF WAKSOL 9-11A IN BULK		
Sample Origin	MV Bow Fortune COMPOSITE of Vessel Tanks AFTER 7 Centre Strb'd, 12 Wing Strb'd		
Sampling Method	ASTM E300	Sample Number	06/19/0089
Date /Time Sampled	03 Jun 2019 05:10	Date/Time Tested	03 Jun 2019 13:15
Order Number	-	Certificate Number	BL114201
Batch Number		Client Ref Number	366815
Intertek Job Number	DRN024998/2019		
<b>TEST DESCRIPTION</b>	<b>METHOD</b>	<b>SPECIFICATION</b>	<b>RESULT</b>
Appearance	*ASTM D4176	Bright and Clear	-
Colour(garyebti)	*ASTM D156	> 15 min	- 21
Flash Point (closedcup) °C	ASTM D93	48 Min	60.0
<b>CARBON DISTRIBUTION:</b>			
C08 and Lighter mass %	*GC	Report	0.3
C12 - C20 mass %	*GC	Report	47.6
C21 - C40 mass %	*GC	Report	29.7
C9 - C11 mass %	*GC	Report	22.4

Key: \* NOT SANAS ACCREDITED    # SUBCONTRACTED TEST    X OUT OF SPECIFICATION TEST

Donald D. Ceramone  
Senior Laboratory  
Technician Hostetler  
Technical Signatory

**Technical Signatory**

A circular stamp with the text "SHIVTEK INDUSTRIES LTD." around the perimeter and "Director" in the center. There is a handwritten signature over the stamp.

Part 3

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**11.3** In view of the above discussions, it appeared that in order to ascertain the specifications/properties of imported goods, viz., Waksol 9-11A Grade, testing of representative samples drawn was done by Central Excise & Customs Laboratories. The Test Report of CRCL, Delhi dated 24.07.2020 revealed that the percentage of oil content was 38.72% by mass which was lesser than the basic requirement of classification of a product under Chapter heading 2710 of Customs Tariff Act, 1975 i.e. 70% by weight. However, M/s. KLJ Resources Limited had classified Waksol 9-11A Grade under Customs Tariff Heading No. 27101990 of the Customs Tariff Act, 1975. Thus, M/s. KLJ Resources Limited mis-declared the content of oil as 70% or more to fulfill the criteria to classify Waksol 9-11A Grade under Customs Tariff Heading No.27101990 of the Customs Tariff Act, 1975 and classified Waksol 9-11A Grade under said Customs Tariff Heading No.27101990 of the Customs Tariff Act, 1975.

**11.4** Further, the Joint Director, Custom House Laboratory, Kandla has opined in respect of sample of Waksol 9-11A Grade [Test Memo No. 03/2019-20 dated 22.07.2019] vide Test Report that "*the sample as received is in the form of clear colorless liquid. It is a preparation obtained by blending hydrocarbon solvent, oil and Wax, fined used as polishes, where in the hydrocarbon solvent, oil used to improve consistency of the polishes and wax used to impart water proof, wear resistance and other properties of the polishes and such product falls under the chapter 3405.2*". Thus, it is evident from the Test Report and opinion given by the Joint Director, Custom House Laboratory, Kandla on sample of Waksol 9-11A Grade that Waksol 9-11A Grade is a preparation obtained by blending hydrocarbon solvent, oil and wax, fined used as polishes to impart water proof, wear resistance and other properties of the polishes and such product is appropriately classifiable under Customs Tariff Heading No.3405 of the Customs Tariff Act, 1962.

**11.5** In view of the above, it appeared that, the Heading No.34.05 of the Customs Tariff Act, 1975, covered "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.

**12.** In view of the discussions in aforesaid paras, it appeared that, on specific intelligence of mis-classification, live consignment of imported "Waksol 9-11A Grade" supplied by M/s. Sasol Chemical, South Africa and imported at Adani Hazira Port by M/s. Shivtek under Bill of Entry No. 3979553 dated 08.07.2019 was placed on hold after drawal of representative samples from the consignment under Panchnama dated 18.07.2019 drawn at Adani Hazira Port Pvt. Ltd. The sample drawn from goods of Bill of Entry No.3979553 dated 08.07.2019 was sent for examination to Custom House Laboratory, Kandla under Test Memo No. 03/2019 dated 22.07.2019. The Joint Director, Custom House Laboratory, Kandla vide Test Report dated 06.08.2019 confirmed that M/s. Shivtek had misclassified the goods declared as "Waksol 9-11A Grade" under Customs Tariff Heading No.27101990 instead of Customs Tariff Heading No.34052000, therefore the said imported goods i.e. Waksol 9-11A Grade totally weighing 138.042 MT totally valued at Rs. 65,28,075/- imported under Bill of Entry No. 3979553 dated 08.07.2019 was placed under detention vide Detention Memo dated 17.09.2019 under the provisions of the Customs Act, 1962 on a reasonable belief that the said Goods were mis-classified in terms of the Customs Tariff Act with intent to evade payment of Customs Duty at higher rate and were liable to confiscation under the provisions of the Customs Act, 1962. The said detained goods were seized vide Seizure Memo dated 05.10.2019. Thereafter, the said seized goods were provisionally released to M/s. Shivtek by the competent authority on execution of Bond for full value of goods and Bank Guarantee of differential Duty of **Rs.15,00,000/-**. Against the Warehouse Bill of Entry No.3979553 dated 08.07.2019, Bills of Entry No.4028982 dated 11.07.2019, 4029005 dated 11.07.2019 and 4038175 dated 12.07.2019 were filed.

**13.** In view of the above discussions, it appeared that as per supplier-manufacturer M/s. Sasol, South Africa, "Waksol 9-11A Grade" was a blend comprising of Waksol A and C9-C11 in a proprietary ratio and it was liquid at 20 Deg C. Whereas, M/s. Sasol explained the manufacturing process of Waksol A 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 hydrocarbon>C20 stream 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, this product is considered a heavy paraffin as it does not meet the European Wax Federation definition of a wax which requires the melting point to be greater than 40oC.*

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

**13.1** In view of the discussions in the above paras, it appeared that, the product Waksol 9-11A Grade was admittedly used in manufacturing of Chlorinated Paraffin as informed by Shri Shiv Kumar Nenwani, Director of M/s Shivtek Industries Private Limited. The literature of product Waksol 9-11A Grade provided by the supplier manufacturer states that the Waksol 9-11A Grade is produced by blending Waksol A and C9-C11 Paraffin 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.

**13.2** In view of the discussions in the aforesaid paras, it appeared that, the Heading No. 34.05 of the 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.

**13.3** In view of the above discussions, it appeared that from the above parameters of ascertaining classification of any product under Chapter 34, Heading 34.05, manufacturing process of Waksol 9-11A Grade, their end uses as confirmed by the Director of the Importer, it appeared that the products viz. Waksol 9-11A Grade were classifiable under Customs Tariff Heading No. 34.05. In order to confirm the classification of the said products, sample was sent to Custom House Laboratory, Kandla, CRCL, Vadodara and CRCL, Delhi. The Joint Director, Custom House Laboratory, Kandla opined that "*The sample as received is in the form of clear colorless liquid. It is preparation obtained by blending hydrocarbon solvent, oil and Wax, fined used as polishes, where in the hydrocarbon solvent, oil used to improve consistency of the polishes and wax used to impart water proof, wear resistance and other properties of the polishes and such product falls under the chapter 3405.2.*

**13.4** From the facts mentioned in the foregoing Paras, it appeared that the classification declared in the Warehouse Bills of Entry and corresponding Ex-Bond Bills of Entry was not correct as the goods had been mis-classified.

**14.** In view of the above discussions, it appeared that the classification of the goods in question, at the time of filing Bill of Entry and other relevant documents filed during import 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 suggested that M/s. Shivtek had failed to furnish correct classification of the goods in question. The Test Report of sample given by Custom House Laboratory, Kandla clearly indicated that the goods viz. Waksol 9-11A Grade appeared to be aptly classifiable under Customs Tariff Heading No.34052000 instead of Customs Tariff Heading No.27101990. It further appeared that the classification of the goods in question was done under Customs Tariff Heading No.27101990 by M/s. Shivtek with intent to evade payment of Customs Duties as the Duty rate under Customs Tariff Heading No.3405 was higher than that under Customs Tariff Heading No.2710. It, thus, appeared that the subject goods were liable to be classified in the residual entry of the said Heading at 34052000 and the classification of such products done by M/s. Shivtek under Customs Tariff Heading No.27101990 was liable to be rejected.

**15.** In view of the above discussions, it appeared that M/s. Shivtek imported Waksol 9-11A Grade and discharged the Customs Duty liability by mis-classifying the said product under Customs Tariff Heading No.27101990 during the period covered under this Show Cause Notice i.e. from 28.03.2018 to 12.07.2019 as detailed in enclosed Annexure-A. Whereas, the Test Reports dated 06.08.2019 of Custom House Laboratory, Kandla and CRCL Delhi dated 24.07.2020 clearly showed that the subject goods were wax preparations and oil content was less than 70%, hence they were not classifiable under Customs Tariff Heading No.27101990 and were appropriately classifiable under Customs Tariff Heading No.3405, where under the rate of Customs Duty was higher as compared to that under Customs Tariff Heading No.27101990. However, M/s. Shivtek had knowingly classified the subject goods under Customs Tariff Heading No.27101990 of the Customs Tariff Act, 1975. M/s. Shivtek was well aware about the implication of higher Duties on the said imported goods and they had knowingly and deliberately mis-

classified the imported goods under Customs Tariff Heading No.27101990 with intent to evade the differential Customs Duty.

16. In view of the above discussions, it appeared that by the aforesaid acts of willful mis statement and suppression of facts, M/s. Shivtek 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 the Customs Act, 1962 for invoking extended period to demand the evaded Duty is clearly attracted in this case. The differential Duties on imports are liable to be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. They have mis-declared the imported goods with respect to their classification and therefore, the goods imported by them are also liable to confiscation under Section 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. M/s. Shivtek is thus liable to penalty under Section 112(a) of the Customs Act, 1962. M/s. Shivtek was involved in carrying, removing, depositing, selling and dealing with the subject goods which were liable to confiscation under Section 111 of the Customs Act, 1962. This commission and omission on the part of M/s. Shivtek, makes them liable to penalty under Section 112 (b) of the Customs Act, 1962 too. Further, since the subject amount of Duty was evaded by M/s. Shivtek by way of suppression of facts and willful mis-statement, they were also liable to penalty under Section 114A of the Customs Act, 1962.

17. In view of the discussions in aforesaid paras, it appeared that M/s. Shivtek had intentionally adopted mis-classification of imported product under Customs Tariff Heading No.2710 in place of correct Customs Tariff Heading No.3405 as the goods classifiable under Customs Tariff Heading No.3405 were attracting a higher rate of Customs Duty. M/s. Shivtek knowingly suppressed the fact that the imported products were containing oil content of less than 70% by weight and mis-declared classification of the product under Customs Tariff Heading No.2710. This fact shows that instead of classifying the imported 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. Shivtek were aware of the composition and properties of the said imported products. By suppressing this material fact, they managed to misclassify the subject imported products under Customs Tariff Heading No.2710 and evaded appropriate Customs Duty against the goods imported by them vide various Bills of Entry as detailed in **Annexure-A** attached to the Show Cause 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 M/s. Shivtek. M/s. Shivtek have short paid Customs Duty amounting to **Rs.64,85,925/-** for the period 28.03.2018 to 12.07.2019 as detailed in Annexure-A attached to the Show Cause Notice by misclassifying the same under Customs Tariff Heading No.2710. Therefore, the said amount of **Rs.64,85,925/-** is liable to be demanded and recovered from M/s. Shivtek 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 the Customs Act, 1962.

**18.** In view of the facts discussed in the foregoing paras and material evidences available on record, it appeared that M/s. Shivtek had imported 2,067 MTs of Waksol 9-11A Grade (as per Out Turn Summary), totally valued at **Rs.9,99,37,216/-** during the period from 28.03.2018 to 12.07.2019 and discharged the Customs Duty liability by mis-classifying the said product under Customs Tariff Heading No.27101990 and contravened the provisions of 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 in as much as they had intentionally mis-classified the goods imported i.e. "Waksol 9-11A Grade" by suppressing the actual description of the goods at the time of filing declarations, seeking clearance at the time of the importation of the goods. Out of the said goods, goods totally weighing 138.042 MTs totally valued at Rs. 65,28,075/-, imported under Bill of Entry No. 3979553 dated 08.07.2019 were detained on 17.09.2019 and were seized on 05.10.2019, being liable for confiscation under Section 111(m) of Customs Act, 1962 and were subsequently released provisionally by the competent authority. Further, balance goods weighing 1,928.6 Mts totally valued at **Rs.9,34,09,141/-** which were not available for seizure have also been imported in contravention of the provisions of Section 46(4) of the Customs Act, 1962. For these contraventions and violations, the total goods fall under the ambit of smuggled goods within the meaning of Section 2(39) of the Customs Act, 1962 and hence goods totally weighing 2,067 MTs totally valued at **Rs. 9,99,37,216/-** appeared to be liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962 in as much as they misclassified the goods to evade differential Customs Duty for which M/s. Shivtek is liable for penalty under Section 112(a) of the said Act for such acts of contravention.

**19. Role and culpability of Shri Shiv Kumar Nenwani, Director of M/s. Shivtek Industries Private Limited.**:-The Custom House Laboratory, Kandla has specifically reported that "*The sample as received is in the form of clear colorless liquid. It is preparation obtained by blending hydrocarbon solvent, oil and wax, fined used as polishes, where in the hydrocarbon solvent, oil used to improve consistency of the polishes and wax used to impart water proof, wear resistance and other properties of the polishes and such product falls under the chapter 3405.2*" and the CRCL, Delhi has specifically reported that the subject imported products were containing oil content less than 70%. For deciding the classification under Customs Tariff Heading No.2710, the oil content should be more than 70% by weight and these facts were known to Shri Shiv Kumar Nenwani, Director of M/s. Shivtek Industries Private Limited, so he has mis-declared the goods Waksol 9-11A Grade to classify it under Customs Tariff Heading No.2710. Thus, it appeared that although the imported products, viz., Waksol 9-11A Grade were not classifiable under Customs Tariff Heading No.2710, M/s. Shivtek classified the said products under Customs Tariff Heading No.2710 with intent to evade the payment of appropriate Customs Duty. The end use of product Waksol 9-11A Grade, its properties and Chapter Notes/parameters for classification under Customs Tariff Heading No.3405, were clearly indicating that these products were classifiable under Customs Tariff Heading No.3405. Whereas, M/s. Shivtek deliberately mis-classified the said products under Customs Tariff Heading No.2710 instead of appropriate Customs Tariff Heading No. i.e. 3405 to evade the Customs Duties. Shri Shiv Kumar Nenwani, Director of M/s. Shivtek Industries Private Limited was fully aware of the facts and it appeared that he had knowingly indulged himself in the evasion by way of mis-declaration and misclassification. Thus, he was involved in carrying, removing, depositing, selling and dealing with the subject goods which he knew were liable to confiscation under Section 111(m) of Customs Act, 1962. 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 Shri Shiv Kumar Nenwani, Director of M/s. Shivtek Industries Private Limited has rendered himself liable to penalty under the provisions of Sections 112(a) and 112(b) of the Customs Act, 1962.

**20.** Therefore, a Show Cause Notice F.No.VIII/10-02/Commr./O&A/2022-23 dated 14.02.2023 was issued to **M/s. Shivtek Industries Private Limited**, CH-1 & CH-2/C, GIDC, Dahej, Tehsil- Vagra, Distt- Bharuch, Gujarat- 392130 having Corporate Office at 802-804, Pearl Best Height II Netaji Subhash Place, Pitampura, Delhi 110034 (IEC No. 0500001448) calling upon them to show cause in writing to the Commissioner of Customs, Ahmedabad having his office at 1<sup>st</sup> floor, Customs House, Nr Akashwani Bhavan, Navrangpura, Ahmedabad, Gujarat as to why:-

- (i) the classification of imported goods i.e. "Waksol 9-11A Grade" having total Quantity 2,067 MTs, totally valued at **Rs.9,99,37,216/- (Rupees Nine Crores Ninety Nine Lakhs Thirty Seven Thousand Two Hundred and Sixteen Only)** covered under Bills of Entry as detailed in Annexure-A to the Show Cause Notice and classified under Customs Tariff Heading No.27101990, should not be rejected and why the same should not be re-classified under Customs Tariff Heading No.34052000 of the Customs Tariff Act, 1975;
- (ii) the differential Duty amount aggregating **Rs.64,85,925/- (Rupees Sixty Four Lakhs Eighty Five Thousand Nine Hundred and Twenty Five Only)** for the period from 28.03.2018 to 12.07.2019 payable on import of Waksol 9-11A Grade valued at **Rs.9,99,37,216/- (Rupees Nine Crores Ninety Nine Lakhs Thirty Seven Thousand Two Hundred and Sixteen Only)**, as detailed in Annexure-A attached to the Show Cause Notice, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962, why the Bond executed by them should not be enforced and why the Bank Guarantee of **Rs.15,00,000/- (Rupees Fifteen Lakhs only)** furnished for differential Duty, should not be encashed and appropriated against the demand;
- (iii) interest at the applicable rate should not be recovered from them on the said differential Customs Duty as mentioned at (ii) above under Section 28AA of the Customs Act,1962;
- (iv) the goods viz. Waksol 9-11A Grade weighing 2,067 MTs, totally valued at **Rs.9,99,37,216/- (Rupees Nine Crores Ninety Nine Lakhs Thirty Seven Thousand Two Hundred and Sixteen Only)** should not be confiscated under the provisions of Section 111(m) of the Customs Act, 1962. Since the same are not physically available for confiscation and also the seized goods were released to M/s. Shivtek on execution of Bond and Bank Guarantee, why fine in lieu of confiscation should not be imposed upon them under Section 125 of the Customs Act, 1962;
- (v) penalty should not be imposed on them separately under Sections 112 (a) & (b) and 114A of the Customs Act, 1962.

21. Vide the aforementioned Show Cause Notice, **Shri Shiv Kumar Nenwani, Director of M/s. Shivtek Industries Private Limited** was called upon to show cause, in writing, to the Commissioner of Customs, Ahmedabad having his Office at 1<sup>st</sup> Floor, Customs House, Nr Akashwani Bhavan, Navrangpura, Ahmedabad with respect to contraventions pertaining to Bills of Entry referred to in Annexure- A, as to why penalty should not be imposed upon him separately under the provisions Sections 112(a) and 112(b) of the Customs Act, 1962 for his role as mentioned in paras supra.

**22. Submissions:** M/s. Shivtek Industries Private Limited and its Director Shri Shivkumar Nenwani vide their letter dated 06.06.2024 submitted their defence reply wherein they interalia stated as under:

**22.1** That their Company is a Private Limited Company in to manufacture of Chlorinated Paraffin (CP) falling under Chapter 38 of the Customs Tariff Act, 1975; that one of the raw materials required for manufacture of CP is 'Waksol 9-11A Grade' which is imported from M/s. Sasol Chemical, South Africa; Waksol is a combination of hydrocarbons and paraffin material; that they have been importing the said item under CTH 27101990 for more than 20 years and when the supplier changed the classification to CTH 2712, they declared the same under the said hearing and filed a bill of entry No. 3979553 dt.8.7.2019 for clearance of the subject consignment from customs claiming partial exemption from BCD vide Notification No.50/2017-Cus dt.30.6.2017 as amended (sl.no.147) for the said sub-heading.; that both the headings attract the concessional rate of duty.

**22.2** They use the imported Waksol 9-11A only for manufacture of Chlorinated Paraffin (CP); that they are manufacturers of various grades of Chlorinated Paraffin for use in plastic and other industries, depending on usage of the product in different applications; that CP of various grades vary in respect of their thermal stability, viscosity, refractive index, colour etc.,; that the CP is manufactured by chlorination of liquid paraffin (Waksol etc.,) and adding Olefins and other materials in the process. There are a number of PVC formulations manufactured from Chlorinated Paraffin and Olefins; that some end products require mechanical strength in end product, some require shining, some require electrical resistance, some require durability, some flame retardancy and some chemical resistance; that based on the requirement of end products, various chains of carbon of paraffin and olefins are blended. Production flowchart of the CP is filed herewith.

**22.3** That they do not use the imported Waksol for manufacture of any other product but only for manufacture of CP and it cannot be used for any other purpose since it is specifically manufactured for the intended use of manufacture of CP; that they have accordingly used entire quantity of imported Waksol for manufacture of CP; that the Chartered Accountant on due verification of the records of both the manufacturing plants certified that the entire Waksol Material imported by them was used for the manufacture of chlorinated paraffin only;

**22.4** That they import Paraffins and Olefins in bulk in ships and transport them into the factory in tankers and unloaded into different storage tanks; that they have 10 tanks wherein imported Paraffin oil of various grades (Waksol etc.,) and Chlorin are stored and 2 tanks wherein these products along with other items are blended; that once CP of a particular grade is planned for production, the paraffin oil and chlorin are pumped into the blending tanks for blending; that the blended material is magnetically filtered to remove MS rust and after dust is removed in mechanical filters for long times in two blending tanks with magnetic filters and mechanical filters with

circulating pumps, the blended material is issued for production for each of particular application; that it is clear from the above that the Waksol material imported by their company was used by them as a raw material for manufacture of Chlorinated paraffin which is sold again as a raw material for manufacture of goods in various industries.

**22.5 Waksol 9-11A:** That Waksol is manufactured out of natural gas and not petroleum oils, by distilling the contents obtained in the Fischer Tropsch Process to recover Wax; that the hydrocarbons i.e., paraffins obtained in the process are further distilled into a number of fractions, the least being Waksol. Detailed write-up on Waksol 9-11A and why it is not used and not useful as Polish or for manufacture of Polishes and also elaborated in the original order in para 8.2. Same is explained below for ready reference:

*Natural Gas is reformed into synthetic gas (syngas) which is then through a proprietary Fisher Tropsch Process reactor. The manufacturing plant runs on 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 (a) water (b) condensates (mainly hydrocarbons C3-C20) (c) reactor wax (mainly hydrocarbons C>20) and (d) tail gas (syngas and C1-C3 hydrocarbons).*

*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.*

*Waksol A typically consists of a C10-C30 mixture of linear and branched paraffins and olefins with the highest concentration in the C8 to C13 carbon range. Waksol A has a congealing point of between 26 and 32 degree C. It is liquid at room temperature. It is not regarded as wax as clarified by the European Wax Federation since was requires the congealing point to be greater than 40 degree.*

*The hydrocarbon >20 stream is distilled into a number of fractions, the lightest being Waksol A which mainly consists of Oxidized Paraffins hydrocarbons in the range of C16-C22. As its melting point is typically 26-28 degree C, this product is considered a heavy paraffin as it does not meet the European Wax Federation definition of a wax which requires the melting point to be greater than 40 degree C.*

*Waksol A and C9-C11 n-paraffin are blended in a proprietary ratio to produce Waksol 9-11A Grade which is a liquid at room temperature.*

**22.6** C9-C11 n-paraffin can be used in various applications including manufacture of Chlorinated Paraffin, Cleaning Agents, Polishes etc., but Waksol 9-11A which is the blend of Waksol A and C9-C11 can only be used for manufacture of Chlorinated Paraffin. Different grades of paraffins and their applications are discussed in para 28.10 of the original order.

**22.7** Waksol 9-11A cannot be used as Polish or even as raw material for manufacture of Polish for the following reasons:

- (a) Waksol and Polishes are different in both chemical and physical properties and distinguishable.
- (b) The products of CTH 3405 are dispersed or dissolved i.e., impregnated with sprits of turpentine or emulsified in an aqueous

medium whereas the Waksol neither disperses nor dissolves in liquid medium.

(c) Waksol A has congealing point of 23 to 32 Degree Centigrade and is a wax oil which cannot be solidified in slabs, pastilles like waxes at room temperature.

**22.8** That the classification of the imported item Waksol 9-11A as Polish for the simple reason that the Chemical Examiner has opined the said item as Polish and also suggested its classification under CTH 3405.2 is illegal and improper;

**22.9** That even the Hon'ble Tribunal in the remand order clearly held that the classification of Waksol 9-11A as polish without explaining how it could be used as Polish is wrong and the classification may be decided after ascertaining the nature of the product;

**22.10 That actual usage of the product:** Waksol 9-11A is used by us only for manufacture of Chlorinated Paraffin and not used as Polish or a raw material for manufacture of Polish. Even the CP manufactured by us is not a raw material for manufacture of Polishes; that the Waksol 9-11A is not technically possible to be used as polish and even as a raw material for the manufacture of polish; that Polishes have emulsifiers, propellant of short chain hydrocarbon like C2-C6 but Waksol 9-11A has a chain above C9-C30; that Polishes have gross fragrance, preservations but no such characteristic with Waksol 9-11A. Waksol 9-11A is more costly than raw material of polishes hence commercially not viable even as raw material for polishes as can be seen from the detailed write-up filed herewith; that even the CRCL, New Delhi in its report dt.24.07.2020 in response to request dt.02.03.2020 of Customs asking whether "(x) Whether the product takes a polish when gently rubbed?", the CRCL answered that "(x). No, it is in liquid form." ; that since the imported material is not used as polish as mentioned by the Chemical Examiner in his report and the impugned show cause notice has not brought any evidence even remotely suggesting that it is used as polish or as raw material for polish, and since the impugned notice is issued on this only ground, further proceedings in this regard are to be dropped.

**22.11 Classification under CTH 3405 is wrong:** That the classification of Waksol which is a paraffin material is under CTH 34052000 as 'polish' is incorrect as it is an industrial raw material whereas polish mentioned in CTH 3405 is a consumer item which may be sold in retail packets as per the explanatory notes to CTH 3405; that it is thus clear that CTH 3405 covers polishes which are directly applied for polishing and also put up for retail sale for use for household or industrial purposes. Waksol imported by us is not used as polish either in domestic or industrial applications.

**22.12 Correct classification is CTH 2710 only:** That the classification of Waksol under CTH 2710 is denied by the department on the ground that it does not contain more than 70% of the oil content as per the entry in the heading; that the said contention is wrong; that the classification of Waksol 9-11A under CTH 27101990 is correct as per note 2 of Chapter 27 mentions which states that "references in heading 2710 to Petroleum Oils and Oils obtained from bituminous minerals include not only petrol oils and oils obtained from bituminous minerals but also similar oils as well as those consisting mainly of mixed unsaturated hydrocarbons, obtained by any process, provided that the weights of the non-aromatic constituents exceeds that of the aromatic components."; that thus the condition of oil content by

more than 70% is applicable only if the product is manufactured from petroleum and other bituminous oils whereas Waksol is manufactured from natural gas by synthesizing it using proprietary Fischer-Tropsch process; that Explanatory note 2 of Chapter 27 clearly suggests that if the non-aromatic component is more than the aromatic component, the item shall fall under CTH 2710; that the CRCL, New Delhi in its report dt.13.10.2015 mentioned clearly that the aromatic content in the sample is 9.7% only implying the balance 90.3% is non-aromatic content. Thus, the classification of Waksol as per the said note 2 read with CRCL report would be under CTH 2710 only.

**22.13** That without prejudice to the above submission that oil content is not the criteria to classify Waksol 9-11A, it is also to submit that the contention of the department that for quantifying the oil content of 70% only the paraffins of C-18 and below are to be treated as oil and above C-18 are to be treated as non-oil has no legal basis; that if this cut off adopted by CRCL, New Delhi is accepted as per its scientific understanding, then the product would fall under CTH 2712 and definitely not under CTH 3405; that the supplier M/s. Sasol of South Africa is exporting the said product to various countries adopting the same classification for decades and internationally accepted classification cannot be questioned based on assumption that the said product is a polish; that they have correctly classified the Waksol 9-11A under CTH 2710 and the same shall be accepted based on its usage and also based on the entries in the chapter notes.

**22.14 Change of classification by the department without cogent reasoning is not permissible:** That though they had clearly proved that the correct classification of Waksol is under CTH 2710, it is also to state that they never used the imported item as it was imported for any other purpose than using in manufacture of CP; that when the Revenue failed to prove that the imported goods were used for the alleged purpose i.e., sale as Polishes put up in unit containers, re-classification based on assumption is illegal as held in the following cases:

- (a) **HPL Chemicals Ltd Vs. CCEx, Chandigarh 2006 (197) ELT 324**
- (b) **Hero Motor corp Ltd. s. CC (NS-I) Raigad 2022 (379) E.L.T. 214 (Tri.- Mumbai)**

**22.15** That change of classification of the imported goods based on its 'end use' is illegal and against the settled legal position. The predominant use or end use of the product by the customer is not a relevant criterion for classification as held in the case of Glaxo Laboratories (India) Ltd vs, UOI 1985 (21) E.L.T. 72 (Bom.) which is passed based on the decision of Hon'ble Apex Court in the case of Dunlop India Ltd vs. UOI AIR 1977 SC 597 held that end use of an article is absolutely irrelevant for the purpose of its classification under a tariff entry where there is no reference to the end use of the article in the entry itself; that they relied on the following decisions in this regard:

- (a)K Raj & Co., vs.UOI 2024 (2) TMI 34- Bombay-HC
- (b)Saurashtra Chemicals Ltd vs. CC, Jamnagar 2019 (365) ELT 920 (Tri-Ahmd)

**22.16** That alternative classification of the said item under CTH 2712 90 30 as slack wax which was adopted by their company, till it was changed by the supplier is also appropriate since with the higher oil content as per the entry in the tariff and with the specific exclusion of the said item under CTH 3404 for the Fischer-Tropsch waxes consisting of higher hydrocarbons; that it is a

settled legal position that once a product is not classifiable under a heading i.e., 3405 in this case, the demand raised under the said chapter heading would not sustain irrespective of the classification adopted by the assessee; that they placed reliance on decision of the Tribunal in the case of CCE, Hyderabad vs. Aries Agrovet Industries Ltd 2017 (7) GSTL 317 (Tri-Hyd).

**22.17** It is a settled legal position that classification of the imported goods shall be determined based on a commercial identity test and not by functional test as held in the case of G.S. Auto international Ltd vs. CCE, Chandigarh 2003 (152) ELT 3 (SC); that imported material is known as Waksol 9-11A as a paraffin material used as industrial raw material for manufacture of Chlorinated Paraffin; that it is not known or used as polish either in domestic market or in industry; that manufacturing process clearly shows that the imported item is a paraffin material and not polish and also known as such in the market and therefore, following the settled law that commercial identity is the basis of classification, the classification of the said item shall be under Chapter 27 and not under CTH 3405 as being contended by Customs.

**22.18 Classification based on Chemical Examiner report is wrong;** That change of classification of imported goods simply based on the report of the Chemical Examiner who has suggested such classification is illegal and improper; that opinion regarding classification of goods by Chemical Examiner, whose cross examination is denied without assigning any reasons, not sustainable as held in the following cases:

- (a) Panoli Intermediates (India) Pvt Ltd and Others v C.C, Kandla reported in 2023 (6) TMI 317-Cestat-Ahmedabad relied in the CESTAT Final order dt 17.04.2024 of the noticee, by which the present de-novo proceedings are undertaken.
- (b) Mcloyd's & Company vs. Commissioner of Customs, Ahmedabad 2014 (310) E.L.T. 929 (Tri. - Ahmd.)
- (c) Pushpanjali Floriculture Ltd vs. Commissioner of Customs, Mumbai 2005 (179) E.L.T. 47 (Tri. - Mumbai)

**22.19** That it is to be further noted as explained below, customs forwarded samples to different laboratories and in their case, the report of CRCL, Kandla in the case of thier sample and CRCL, New Delhi in the case of sample of another importer were relied upon. However, both the said laboratories have no facilities to test Waksol and hence, the CBIC vide its Circular No.11/2018-Cus., dt.17-5-2018 and Circular No.43/2017-Cus., dt.16-11-2017 clearly directed the Customs that Waksol shall be tested only in certain designated laboratories since CRCL has no facilities to test this product. Though this submission is made by us, same is ignored. Demand is not sustainable in such cases as held in the case of Oasis Impex vs. Jamnagar (Prev) reported in 2024 (2) TMI 445 - Cestat Ahmedabad; that the impugned order was passed ignoring this submission and circulars of CBEC; that Board Circulars are binding on the departmental officer as held by the Hon'ble Supreme Court in the case of CCE, Bolpur vs. Ratan Melting & Wire Industries reported in 2008 (10) TMI 5 - SUPREME COURT; that every material is to be tested following testing methods prescribed in BSI and for paraffins also such method IS 4654 : 2019 is prescribed. It is not known whether the sampling, testing and storage methods stipulated for Waksol were followed by the Chemical Examiner or not; that they had requested for cross examination of the Chemical Examiner to know how he could give his report mentioning how their product could be used as polish and how he could suggest classification of the goods without even proper testing; that same may please be provided to them.

**22.20 Classification based on reports of other importers and delay in testing is wrong:** That rejection of the classification of the material imported by the assessee based on the sample drawn from the consignment imported by another importer that too more than a year after such import is illegal and illogical since time lag leads to change in physical and chemical characters of any product; that such reliance even though the goods were imported by both the importers in the same vessel is highly improper and irregular; that as clearly mentioned in the impugned show cause notice, customs had drawn samples of the Waksol imported by us on 22.7.2019 and sent to CRCL, Kandla with many questions raised with regards to the nature of the product. The CRCL in its bald report dt. 06.08.2019 without giving any specific answers to the questions raised by customs simply reported that the imported Waksol is polish and to be classified under CTH 3405.2; that it is to be noted that the impugned notice does not rely solely on this test report, and it did not ask CRCL to re-test the sample for the answers it wanted; that 3. Customs then drew a sample of Waksol imported by another importer M/s. KLJ Resources Ltd on 31.12.2019 i.e., four months after the first sampling and import of the material and sent the same to CRCL, Vadodara for analysis; CRCL, Vadodara in its report dt.4.2.2020 i.e., two months after the drawl and six months after the import sent its report giving certain details; that customs again sent sample drawn on 29.7.2019 to CRCL, New Delhi on 02.03.2020 for analysis and the CRCL, New Delhi in its report dt.24.7.2020 had sent its para wise report including mentioning that the oil content of paraffins below C18 is less than 70%; that this report is used by customs for issue of the impugned notice; that it is clear from the above that customs had used the sample of the material imported more than a year after the import and such test results received with such long delay cannot be used for classification of the goods; that they relied on the following decisions in this regard:

- (a) Jhunjhunwala Vanaspati Ltd vs. CC (Appeals), Kolkata 2019 (369)  
ELT 776 (Tri-Kol)
- (b) Moorgate Industries (I) Pvt Ltd vs. CC (Import), Kolkata reported in  
2023 (12) TMI 963 - CESTAT KOLKATA
- (c) **Vedanta Ltd vs. Commissioner of Customs, Bhubaneswar in**  
2023 (8) TMI 947 - CESTAT KOLKATA

**22.21 Department cannot adopt two classifications:** That alternative classification proposed by the revenue under CTH 3404 is wrong since the department cannot contend the classification of product under two heading and further the said item does not fall under this heading as the HSN explanatory notes to CTH 3404 clearly excludes the synthetically produced Waksol through Fischer-Tropsch process consisting essentially hydrocarbons; that onus to show that a particular Tariff item is always on the revenue, as held by the Hon'ble Supreme Court in the case of CCE, Calcutta Vs Sharma Chemical Works 2003 (154) ELT 328 (SC).

**22.22 Assessments have become final and hence, the demand is illegal:** That re-classification of all the consignments imported in the past without any basis and on mere assumption is incorrect without even chemical /analysis on the said product; that Annexure-A to the show cause notice does not mention the subject bill of entry dt.8.7.2019; that once a bill of entry is assessed the only option for the revenue is to file an appeal or in the case of demand of duty same can be made within the normal period of limitation; that they placed reliance on the following placed on the following decisions.

- (a) ITC Limited vs. CCE, Kolkata-IV 2019 (9) TMI 802-Supreme Court]
- (b) Brightpoint I Pvt Ltd vs. Commissioner of Customs, Ahmedabad
- (c) Jairath International and Rajesh Dhanda Vs Union of India [2019(10) TMI 642-Punjab and Haryana High Court.

**22.23 Quantification of duty is wrong:** That the demand is not legal, the quantification of the duty also wrong since their company had imported certain materials cleared against some bills of entries under advance authorization scheme and no duty can be demanded in respect of these bills of entry and duty to this extent to be reduced; that the demand to be reduced works out to Rs.21,38,595/- hence, even assuming that there is duty liability on them, it would be restricted to Rs.43,47,330/- only;

**22.24 Demand barred by limitation and confiscation and imposition of penalty not warranted:** That entire demand is barred by limitation since show cause notice is issued on 12.02.2023 for the imports made during March 2018 to July 2019; that the subject import was made in July 2019 and test report is dt.06.08.2019; that the notice was issued three years after the receipt of the import and test report is barred by limitation particularly when have not suppressed any information and the goods were being clearing under the CTH declared by their company and other importers as well; therefore, suppressions cannot be invoked in such cases; that they placed reliance on the following decisions in this regard:

- (a) RP Exports vs. CCE reported in 2018 (9) TMI 1191- Cestat-Chennai
- (b) Continental Foundation Joint Venture Sholding Naptha H.P Vs Commissioner of Central Excise, Chandigarh-I [2007-TIOL-152-SC-CX]

**22.25** That it is a settled legal position that in the case of the difference opinion in respect of classification of the product extended period cannot be invoked; that they placed reliance on the following decisions.

- (a) Northern Plastic Ltd V commissioner of Custom 1998 (101) ELT 549 (SC)
- (b) O.K. Play India Ltd v Commissioner of Custom 2005 (180) ELT 300 (SC)
- (c) Shah Foils Ltd Vs CC Mundra 2024(5) TMI 336-Cestat Ahmedabad

**22.26 Proposals for confiscation of goods and imposition of penalties are not correct:** That proposal to confiscate the goods under Section 111(m) of the Customs Act, 1962 for wrong classification is not correct; that confiscation of goods which were not available physically and consumed in the manufacture of finished goods which were either exported or cleared on payment of duties is not allowed as held in the following cases:

- (a) Shiv Krupa Ispat Pvt Ltd v CCE 2009 (235) ELT 623 (Trib- LB)
- (b) CCE, Surat Vs. Premier Polyspin Private Limited reported in 2010 (257) E.LT. 447 (Tri.-Ahmd.)

**22.27** That it is no more res integra that proposal for imposition of equal penalty alleging suppression and willful misstatement is not warranted in cases involving classification disputes. Further, no information was

suppressed in the bills of entry while claiming classification; that they relied on following cases:

- (a) Abraham J. Tharakan vs. CCE, Cochin 2007 (210) E.L.T. 112 (Tri. Bang)
- (b) CC, (Import), Nhava Sheva vs. Vodafone Essar Gujarat Ltd 2020 (373) E.L.T. 421 (Tri.- Mumbai)

**22.28 Penalty on Director is wrong:** That the proposal to impose penalty on Director of their company is not maintainable, since the matter involves classification, which is interpretative in nature. They cited decision of Delhi Tribunal rendered in case of Bright Steel House Vs Commissioner of Customs, Amritsar 2015(11) TMI 948-Cestat New Delhi CESTAT, Bangalore rendered in case of **Karnataka Agro Chemicals Versus Commissioner of Central Excise, Bangalore-III 2024 (2) TMI 767**

**23. Personal Hearing:** Personal Hearing in the matter was held on 21.06.2024 which was attended by Advocate Shri Y. Sreenavasa Reddy and Shri Shiv Kumar Nenwani on behalf of M/s. Shivtek Industries Private Limited wherein they reiterated their submission as detailed in their written submission dated 06.06.2024

**24. Discussion and findings:** I have carefully gone through the Show Cause Notice dated 14.02.2023, written submission dated 06.06.2024 and records of personal hearing held on 21.06.2024 and Order No. A/10077-10078/2024 dated 17.04.2024 issued by CESTAT, Ahmedabad.

**25.** This denovo proceeding has been initiated consequent to the CESTAT's Final Order A/10077-10078/2024 dated 17.04.2024 in respect of Appeal No. C/10774/2023 and C/1010775/2023 filed by M/s. Shivtek Industries Private Limited and its Director Shiv Kumar Nenwani,. Relevant Para of CESTAT's Final Order No A/10077-10078/2024 dated 17.04.2024 dated 25.01.2023 is re-produced:-

"4. We have considered rival submission, we find that the dispute involved in the instant case is identical to the dispute involved in the case decided vide order no. **10806-10839/2023 dated 06.04.2023**. In the said decision, after examining the dispute the tribunal observed as follows:

*"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 appear 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.

29. Appeal allowed by remand.”

4.1 It is seen that the matter was remanded to the original adjudicating authority for fresh adjudication on the ground that the adjudicating

authority needs to give his own findings on the issue of classification and also various other issues mentioned in para 27 to 29 of the said order reproduce above.

4.2 In his background, it is felt that this matter should also be remanded back to the original adjudicating authority or identical terms as in order dated 06.04.2023 (supra) to be decided a fresh."

**25.1** The order dated 17.04.2024 of Hon'ble CESTAT has been accepted by the department on 10.05.2024.

**25.2** I find that the aforesaid CESTAT's Order No. **10806-10839/2023 dated 06.04.2023** was issued with regard to import of "Waksol 9-11A" by M/s. Panoli Intermediates (India) Pvt. Ltd., New Delhi and Others from Kandla Port. I find that present Noticee M/s. Shivtek Industries Pvt. Ltd was also one of the co-noticee in the Supplementary Show Cause Notice dated 07.02.2020 covered under said CESTAT Order against whom M/s. Panoli Intermediates (India) Pvt. Ltd along with present Noticee M/s. Shivtek Industries Pvt. Ltd had preferred appeal before CESTAT, Ahmedabad. CESTAT vide Order No. 10806-10839/2023 dated 06.04.2023 remanded back to the Adjudicating Authority with direction as stated above in Para 25.1. I find that all the importers alongwith present Noticee M/s. Shivtek Industries Pvt. Ltd had imported goods(purchased) from M/s. Sasol Chemical, South Africa. Since the CESTAT has remanded back the instant case in pursuance of their Order No. 10806-10839/2023 dated 06.04.2023, it would be worth to discuss the Test Reports in respect of impugned goods' Waksol 9-11A Grade' imported at Kandla Port as well as import of same goods by M/s. KLJ Polymers at Hazira Port from the same supplier and in same vessel, in light of the direction of the Hon'ble Tribunal in their Order dated 17.04.2024.

**26. Test Result of sample of "Waksol 9-11A Grade" drawn from the import by Noticee M/s. Shivtek Industries Pvt. Ltd.:**

**26.1** The representative sample of "Waksol 9-11A Grade" drawn under Panchnama dated 18.07.2019 from the goods declared under Bill of Entry No.3979553 dated 08.07.2019 arrived in vessel MT Bow Fortune, under IGM No. i.e. 2228918 dated 08.07.2019 at Adani Hazira Port, Surat by the Noticee, was forwarded to Customs House Laboratory, Kandla by DRI for testing vide Test Memo No.03/2019-20 dated 22.07.2019. Joint Director, Custom House Laboratory, Kandla submitted Test Report dated 06.08.2019 and has given the opinion in respect of classification of goods as under.

*"The sample as received is in the form of clear colorless liquid. It is preparation obtained by blending hydrocarbon solvent, oil and Wax, fined used as polishes, where in the hydrocarbon solvent, oil used to improve consistency of the polishes and wax used to impart water proof, wear resistance and other properties of the polishes and such product falls under the chapter 3405.2".*

**26.2 Test Result in respect of M/s. KLJ Resources Pvt. Ltd:**

**26.2.1** Further, to sustain the above stated Test Report of CRCL, Kandla who opined that merit classification of subject goods is under Chapter Head 3405, DRI had relied on the Chemical Test Reports issued by the Test Report of CRCL, Vadodara, Kandla and New Delhi in respect of same product imported by another Importer, viz. M/s. KLJ Resources Pvt. Ltd., Gandhidham as the investigation regarding classification of same imported goods viz. Waksol 9-

11A Grade' was under examination of the Department in the case of another Importer namely M/s. KLJ Resources Pvt. Ltd. Since the said Importer had also imported the same goods from the same overseas supplier, viz. M/s. Sasol Chemical, South Africa at Hazira Port under Bills of Entry No 4035406 dated 12.07.2019 and 4273986 dated 29.07.2019, and in the same vessel i.e. MT Bow Fortune, under same IGM No. i.e. 2228918 dated 08.07.2019 at Adani Hazira Port, Surat, conclusion on the investigation done in respect of the classification of the product imported by them i.e. Waksol 9-11 A Grade, would directly impact the present case also. Therefore, it would be relevant to refer the Test Reports received in the case of M/s. KLJ Resources Pvt. Ltd. in order to decide the merits of the classification dispute.

**26.2.2** M/s. KLJ Resources Pvt. Ltd filed Bills of Entry No.4035406 dated 12.07.2019 and 4273986 dated 29.07.2019 at Adani Hazira Port for clearance of goods supplied by M/s. Sasol Chemical, South Africa and declared the description of goods as '**Waksol 9-11A Grade**' with generic description as Petroleum Oil: 70% or more of petroleum oils with FP>25 degree and classified it under Customs Tariff Heading No.27101990. Samples from the consignment imported under said both the Bills of Entry were drawn at Adani Hazira Port Pvt. Ltd. by the Officers of DRI. The sample drawn from the goods declared under Bill of Entry No.4035406 dated 12.07.2019 was forwarded to the Customs House Laboratory, Kandla and the sample drawn from the goods declared under Bill of Entry No.4273986 dated 29.07.2019 was forwarded to Central Excise & Customs Laboratory, Vadodara.

**26.2.3 The CRCL. Vadodara** submitted their Test Report dated 04.02.2020 in respect of sample drawn from consignment imported under Bill of Entry No.4273986 dated 29.07.2019, which is as under:

*"The sample is in the form of clear colourless liquid at ambient temp. (24-25 degree C) having following content:*

- i) *Test for instauration* = +ve
- ii) *Flash Point (PMCL)* = 61 degree C
- iii) *Specific gravity at 23 deg C* = 0.7770
- iv) *Distillation Range*  
*IBP* = 140 deg C  
*FBP* = 340 deg C (85% distilled, left residual matter)
- v) *Sample at 20deg C is turbid*
- vi) *Dropping point & rotational viscosity at a temp of 10 deg C above dropping point could not be ascertained for want of facility.*

**26.2.4 The Joint Director, Custom House Laboratory, Kandla** submitted Test Report dated 06.08.2019 in respect of sample drawn from the consignment imported under Bill of Entry No.4035406 dated 12.07.2019, which is as under.

*"The sample as received is in the form of clear colorless liquid. It is preparation obtained by blending hydrocarbon solvent, oil and wax, fined used as polishes, where in the hydrocarbon solvent, oil used to improve consistency of the polishes and wax used to impart water proof, wear resistant and other properties of the polishes and such product falls under the chapter 3405.2".*

**26.2.5** Further, on request of M/s. KLJ Resources Ltd. the sample in respect of Bill of Entry No. 4273986 dated 29.07.2019 were sent for re-testing to the CRCL, New Delhi seeking clarification on certain **Queries**. The Joint Director

(NFSG), CRCL, New Delhi vide their letter F.No.27/Cus/C-48/2019-20 dated 24.07.2020 communicated Re-Test Report as under:-

*The sample is in the form of colourless oily liquid at room temperature (27°C). It is composed of paraffin wax and n paraffins. It is having following characteristics:-*

Sr. No.	Parameter	Values	Remarks
1	Density at 15°C	0.7843 gm/ml	
2	%n Paraffins below C 18 (by GC) (Oil)	38.72	Less than 70%
3	%n Paraffins above C 18 (by GC) (Wax)	61.28	Above 30%
4	Distillation Characteristics IBP 5% Recovery 35 % Recovery 90% Recovery 92% Recovered	164°C 171°C 320°C 357°C 369°C	

**26.2.6** Point-wise reply has also been provided by the Joint Director (NFSG), CRCL, New Delhi under above mentioned Re-Test report which is compared with Query/point raised by this office and point-wise reply and observation are as under:

Query/point raised by this office	CRCL Lab Reply	Observation
(i) What is the composition of Product	(i) The sample is composed of Paraffin wax with n paraffin.	The Product is having Paraffins (Oil) contents 38.72% and Paraffin Wax Contents 61.28%. Thus, product is mixture of paraffinic hydrocarbon.
(ii) Whether the product obtained by the Industrial Treatment of fats, oils or waxes	(ii) No Comment	Not given any comment
(iii) Oil Content (% by weight)	(iii) N Paraffin content (Oil) is 38.72% by Gas chromatography analysis	Thus, product is mixture of hydrocarbon having %n Paraffins below C18 (by GC) (Wax) as 61.28%
(iv) Whether the product is mixture of separate chemical compounds	(iv)The sample is a mixture/preparation of paraffin wax and n Paraffin.	The product is a mixture of n-Paraffin Wax with n-Paraffins having different molecular weight.
(v) What is dropping point of product	(v) Not Applicable	-----

(vi) What is viscosity of product measured by rotational viscometer at a temperature of 10 degree Celsius above dropping point	(vi) Not Applicable	---
(vii) Whether at 20 deg centigrade, the product is transparent or translucent	(Vii) The samples is hazy at 20 degree Celsius	---
(viii) Whether the product is soft or brittle at 20 degree Centigrade	(viii) The product is soft mass at 20 degree Celsius	---
(ix) Whether the product can be drawn into threads above its melting point	(ix) No, it cannot be drawn into threads	---
(x) Whether the product takes a polish when gently rubbed	(x) No, it is in Liquid form	No clear opinion given whether product takes a polish when gently rubbed.
(xi) Whether the product having waxy character	(xi) The product is oily liquid	---
(xii) Usage of product; whether the product can be used in polishes, creams and similar preparations for footwear or leather, or maintenance of wooden furniture, floors or other woodworks or coachwork, scouring pastes and powders and other scouring Preparations?	(xii) May be ascertained at your end.	---
(xiii) Any other important information about the product	(xiii) The details are mentioned above.	---
(xiv) Technical opinion of laboratory regarding appropriate classification of the product under Customs tariff	(xiii) The details are mentioned above.	Not given any opinion regarding appropriate classification of the product

**26.3** It is also found that the aforesaid Test Report of CRCL, New Delhi which clearly reported that the sample of goods contains 38.72% of Paraffins (oil), is agreed by M/s. KLJ Resources Pvt. Ltd and hence they have given up their classification of the impugned goods under Customs Tariff Heading 2710 by revised claim for classification under Customs Tariff Heading 2712 as Slack Wax. Shri Shiv Kumar Nenwani, Director of M/s. Shivtek Industries Private Limited in his statement dated 06.02.2020 recorded under Section 108 of the Customs Act, 1962 mentioned that their supplier Sasol Chemicals, South Africa have changed the Customs Tariff Heading of the said product to 27129030, hence, they are also filing their Bills of Entry under the same Customs Tariff Heading. As per the charges made out in the Show Cause Notice, the only Customs Tariff Headings to be discussed are 27101990 and 34052000. Therefore, as discussed earlier, the classification of the impugned goods viz. under Customs Tariff Heading 2712 is also required to be discussed.

**26.4 Test Result of "Waksol 9-11A Grade' imported by M/s. Panoli Intermediates and other importers including present Noticee M/s. Shivtek Industries Pvt. Ltd at Kandla Port in Tank No.205 of Liquid Terminal of M/s. IMC Ltd:**

**26.4.1** 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.

**26.4.2** 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

*"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.*

**26.4.3** 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

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 <b>wax preparation</b> .
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 <b>wax preparation</b> .
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

**26.4.4** Further, on request to offer 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 9-11A 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 C<sub>9</sub>-C<sub>11</sub> 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 C<sub>14</sub>-C<sub>28</sub>) and C<sub>9</sub>-C<sub>11</sub> paraffins.**

**39.3.5** 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.

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."

#### 26.5 Test Result of goods stored at Tank No. 113 Evidences in SCNs dated 22.01.2020 and 07.02.2020 regarding material in Tank No. 113 imported at Kandla Port:

**26.5.1** 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%".

**26.5.2** Covered by the Test Memo No. 60/2015-16 dated 03.09.2015 which was meant for representative sample pertaining to imported 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)

**26.6** 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**.

**26.7** M/s. Shivtek vide letter dated 27.09.2019 submitted that :

*Waksol 9-11 A Grade has two components and is produced by SASOL CHEMICALS, A DIVISION OF SASOL SOUTH AFRICA (PTY) LTD" at its Sasolburg Plant in South Africa and is fully synthetic originating from natural gas via the fisher-Tropsch process. These two components are:*

1. N-paraffin C9-C11
2. Waksol A

**Manufacturing Process:** Natural gas is reformed into synthesis gas (syngas) which is then through a Proprietary fisher tropesch Process converted to various hydrocarbons which are then distilled into various fractions including Waksol A and N-Paraffin C9-11. The later is hydrogenated to remove unsaturation and oxygenates. Waksol A typically consists of a C10-C30 mixture of linear and

branched Paraffins and Olefins with the highest concentration in the C8 to C13 Carbon range. Waksol A has a congealing point of between 26 and 32°C. The product Waksol A is still liquid at room temperature. This product does not meet the requirement of wax (as per European wax federation definition) since wax requires the congealing point to be greater than 40°C.

Waksol 9-11A Grade is in form of Liquid Hydrocarbon and has flash point of above 48°C and Contains Carbon chain from C8 to C30 as per Certificate of quality of Waksol in Vessel MV Bow Fortunes which came to us recently at Hazira Port vide BL No, 2002/366815 and Voyage No. 201903 in July 2019.

**26.8** Product Data Sheets of 'Waksol 9-11A' of overseas supplier (manufacturer) M/s. Sasol, South Africa: The oil content in the Waksol A which is main component (70-80% part) of Waksol 9-11A is 14 % (by mass) as per Product Data Sheets provided by supplier manufacturer M/s. Sasol, South Africa as per certificate of analysis of M/s Intertek reproduced which is reproduced as under:

CERTIFICATE OF ANALYSIS				Page 1 of 1
Client Product	Sasol Chemicals a division of Sasol South Africa (Pty) Ltd Waksol 9-11			
Sample Origin	Land Tank Sampling (After Blending) Bulwana Tank Terminals Bay 3 TK634			
Sampling Method	ASTM E300	Sample Number	11715/0655	
Date Sampled	13 November 2015	Time Sampled	03:00	
Date Tested	13 November 2015	Time Tested	12:00	
Batch Number		Order Number		
Weather Condition				
Intertek Job No.	OBIN003671/2015	Client Ref. No.		
TEST DESCRIPTION	METHOD	SPECIFICATION	RESULT	
Appearance	ASTM D4176	Bright and Clear	PASSES	
Colour (symbol)	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	
<b>CARBON DISTRIBUTION:</b>				
C08 and Lighter mass %	GC	Report	0.6	
C12 - C20 mass %	GC	Report	47.0	
C21 - C30 mass %	GC	Report	33.0	
C8 - C11 mass %	GC	Report	19.4	

Key: \* SANAS ACCREDITED TEST + REFERENCE METHOD

*Krishan Kumar*  
KRISHAN KUMAR  
19-1-2016

Technical Signature  
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The results relate to the sample tested and the most recent methods available with a 95% confidence level

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Directors: M C Raby-Smith, D R Kunene, D P Rudlin



## 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  
KIRSHAN 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  
17.12.11

## **26.9 EVIDENCE IN THE FORM OF STATEMENTS OF VARIOUS PERSONS:**

**26.9.1** As per various statements referred to in the SCN dated 22.01.2020 and supplementary SCN dated 07.02.2020 issued to M/s. Panoli Intermediates (India) Pvt. Ltd and present Noticee M/s. Shivtek Industries Pvt. Ltd, as well the statement recorded in respect of import effected from Hazira Port by the Noticee M/s. Shivtek Industries Pvt. Ltd the end use of impugned goods is for manufacturing of chlorinated paraffin wax which was used in PVC industries, shoe industries, polymer industries and wire and PVC pipe industries and paint industries etc.

**26.9.2** Shri Krishan Kumar, Director of M/s. Apratim International Pvt. Ltd., an agent of overseas manufacturer supplier in the SCN dated 22.01.2020 and supplementary SCN dated 07.02.2020 issued to M/s. Panoli Intermediates P. Ltd and present Noticee M/s. Shivtek Industries P. Ltd., for the imported of impugned goods at CH, Kandla 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%).

**26.9.3** M/s. Shivtek Industries Pvt. Ltd in his statement dated 06.02.2020 has stated that they are importing raw materials 'Waksol 9-11A' for manufacturing of 'Chlorinated Paraffin Wax (CPW)' for use in various industries.

**26.10** In the backdrop of facts and discussion at paras supra, I would like to proceed to determine whether classification under Customs Tariff Item No. 27101990 claimed by the Noticee is correct or otherwise.

**27.** I find that Customs Tariff Heading No.2710 covers 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. Thus in order to be covered under this Customs Tariff Heading, the product is required to contain by weight 70% or more of petroleum oils. However, Re-Test Report of sample of goods drawn from goods declared under Bill of Entry No.4273986 dated 29.07.2019 provided by CRCL, New Delhi in respect of sample of product in question imported by M/s. KLJ Resources Pvt. Ltd, stated above, clearly replied to the query in the Test Memo about the **Oil Content (% by weight)** that the **N Paraffin content (Oil) is 38.72% by Gas chromatography analysis**. Thus it is proved beyond doubt that the oil content in the sample is only 38.2% i.e. much less than the required percentage of 70%. The percentage of oil content is the most important parameter in deciding the classification of the impugned goods, and hence this Technical opinion/Report is having much relevancy in the case. Hence, on this ground itself, the imported product will move out of the scope of Customs Tariff Heading No.2710. At this juncture, it is worthwhile to reiterate that this re-Test Report of CRCL, New Delhi is wholly applicable to the present case also since the Importer and M/s.

KLJ Resources Pvt. Ltd had imported the goods from the same overseas supplier, Viz. M/s. Sasol Chemical, South Africa at Hazira Port and in the same vessel i.e. MT Bow Fortune, under same IGM No. i.e. 2228918 dated 08.07.2019 at Adani Hazira Port, Surat. Further the test reports in respect of impugned imported goods at Kandla Port are also admissible in the present case. I find that the chemical contents of the impugned goods manufactured by M/s. Sasol is the same and also end-use of the products manufactured by the manufacturer should also be the same. These factors are clearly visible from the different Test Reports issued by the Customs House Laboratory, Kandla in respect of product imported by the present Noticee, M/s. KLJ Resources Pvt. Ltd as well as imports effected from Kandla Port wherein the composition, nature, form, usage etc. of the products are reported as same in reports. Thus, aforesaid test report of CRCL, New Delhi/ Kandla and Vadodara are applicable to the present case also.

**27.1** From the above discussion of Test Reports/ Statement and Data Sheet of impugned goods, it reveals that Noticee has mis-classified the impugned goods under Customs Tariff Item No. 27101990.

**28.** I find that Hon'ble Tribunal has directed that *"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 required to be made with respect to nature of the goods and predominant use and further whether the goods in question' often put up for retail sale or otherwise.

**28.1** I find that Hon'ble Tribunal has directed that impugned goods be examined w.r.t various exclusion clauses under relevant HSN Notes, and consider them under rival claims including 2712. I find that M/s. Shivtek Industries Private Limited in its statement dated 06.02.2020 recorded under Section 108 of the Customs Act, 1962 mentioned that their supplier Sasol Chemicals, South Africa have changed the Customs Tariff Heading of the said product to Customs Tariff Item No. 27129030, hence, they are also filing their Bills of Entry under the same Customs Tariff Item No. Thus, to decide whether goods falls under CTH 3405 as alleged by the Revenue or under CTH 2712, it is worth to discuss the relevant entries and its description covered under CTH 2712 and 3405. Further, I find that that both Revenue and importer are in agreement before the Hon'ble Tribunal that impugned goods are not classifiable under CTH 3404 and therefore, I refrain from discussion regarding classification under CTH 3404.

**28.1.1** The relevant CTH and HSN are accordingly reproduced below:-

**CTH 2712:**

<b>Tariff Item</b>	<b>Description of article</b>
<b>2712</b>	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/cm<sup>3</sup>, 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.).

#### **Customs Tariff Heading No. 3405:**

**3405 POLISHES AND CREAMS, FOR FOOTWEAR, FURNITURE, FLOORS, COACHWORK, GLASS OR METAL, SCOURINGPASTES 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)

**28.1.2** Waksol A is a Synthetic Paraffin Wax, as per opinion of CRCL, and Parafin wax as confirmed by statement dated 19.01.2016 of Shri Krishan Kumar, Director of M/s Apratim in the case of SCN issued to M/s. Panoli Intermediates (India) Pvt. Ltd and present Noticee M/s. Shivtek Industries P. Ltd for the import of impugned goods from Kandla Port. 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 reports that WAKSOL 9-11A is '**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).

**28.1.3** 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 reports as well as the submission of the noticee, it is observed that WAKSOL 9-11A 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.

**28.1.4** With regards to 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 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.

**28.1.5** 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).*

**28.1.6 Exclusion clause under HSN 2712 says as under:**

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.

**28.1.7** The goods Waksol9-11 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, there is no ground 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.

**28.1.8** As per the report of CRCL, Waksol 9-11A is a proprietary mixture of Waksol A and C9-11. The statement and the literature of oversea supplier SASSOL also confirm these details.

**29. Whether the impugned goods viz. Waksol 9-11A grade' is classifiable under Customs Tariff Item No. 34052000 as proposed in Show Cause Notice.** I find from the foregoing paras that the impugned goods is neither classifiable under Customs Tariff Item No. 27101990 nor under Customs Tariff Item No. 27129030, I proceed to decide whether the said goods is classifiable under Customs Tariff Item No. 34052000 or otherwise.

**29.1** 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) ....."*

**29.2** CRCL reports opines 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.*

**29.3** Overseas supplier SASSOL 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.

**29.4 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.

**29.5** As per technical literature regarding the product 'Waksol A', available in the website [http://rolfeschemicals.com/images/products/MSDS%20\\_Trisol%20OD](http://rolfeschemicals.com/images/products/MSDS%20_Trisol%20OD), the terms 'Waksol A' and 'Paraffin Wax' are synonyms and not different products. Relevant page of the said Technical literature is reproduced below for easy reference.

# Rolfes Chemicals

## Material Safety Data Sheet

### WAKSOLA

Revision Date: 15.10.2017

#### Section 1 - Chemical Product and Company Identification

Products Name:	Waksol A
Synonyms:	Candle wax, Paraffin wax, Medium wax
Company	Rolfes Chemicals A Division of Rolfes Group of Companies Cnr Branner and Strachan, Industries East Germiston
Information (Product safety)	Telephone: +27 11 873 0157 Fax: +27 11 8738480
Emergency telephone	South Africa +27 (0)86 044 44 11

#### Section 2 - Composition, Information on Ingredients

CAS#	Chemical Name:	%	EINECS#
8002-74-2	Paraffin wax	100%	232-315-6

Hazard Symbols: None  
Risk Phrases: S 2

#### Section 3 - Hazards Identification

##### EMERGENCY OVERVIEW

*This product is not classified as hazardous according to Directive 67/548/EEC*

##### Potential Health Effects

Eye:	None in solid state. Molten material may cause severe burns. In prill form may cause irritation.
Skin:	None in solid state. Molten material may cause severe burns.
Ingestion:	Molten material may cause burns on contact with the mouth, oesophagus or stomach.
Inhalation:	Inhalation of paraffin wax vapours or powder particles may respiratory irritation.
Chronic:	Not available
Chemical Hazards:	None

#### Section 4 - First Aid Measures

Eyes: Flush eyes with plenty of water for at least 15 minutes, occasionally lifting the upper and lower eyelids. Check for and remove contact lenses. Get medical aid.

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**29.6** It would be seen that the Re-Test Report of CRCL, New Delhi and the manufacturing process sheet of the concerned overseas manufacturer viz. M/s. Sasol Ltd, have clearly mentioned the main two ingredients of the product in question viz. Waksol 9-11A Grade, are 'Waksol A' and 'C9-C11 n-paraffin'. Although these ingredients are not specifically mentioned in the Test Report of Customs Laboratory, Kandla, it is stated generally therein that the sample of product viz. Waksol 9-11A Grade, is a preparation obtained by blending hydrocarbon solvent, oil and wax which indicates that Waksol A (Paraffin wax) and n-paraffin are the ingredients.

**29.7** Further, it would be prudent to examine the nature and usage of the aforesaid two materials contained in the Waksol 9-11A Grade, viz. Waksol A and C9 -C11 n-Paraffin. As per the details available on the website of <https://coatings.specialchem.com/product/a-sasol-sasolwax-waksol-a>, Sasolwax, “**Waksol A**” is a Fischer-Tropsch unmicronized wax by Sasol. It has straight chain of hydrocarbons, high melting point, low viscosity and excellent hardness. Sasol wax “**Waksol A**” is suitable for paint strippers for wood surfaces and protection for wood surfaces. Scanned image of the same is shown hereunder:

The screenshot shows a web browser displaying the SpecialChem website. The URL in the address bar is <https://coatings.specialchem.com/product/a-sasol-sasolwax-waksol-a>. The page header includes the SpecialChem logo, a search bar, and navigation links for 'Subscribe to Newsletters', 'Login / Register', and 'Coatings Ingredients'. The main content area features a banner for 'Showa Denko Becomes Newly Integrated Company' and 'RESONAC Chemistry for Change'. Below this, a 'Universal Selector' box displays product details for 'Sasolwax Waksol A'. The details include: 'Technical Data Sheet | Supplied by Sasol', a description stating 'Sasolwax Waksol A is Fischer-Tropsch unmicronized wax by Sasol. It has straight chain of hydrocarbons, high melting point, low viscosity and excellent hardness. Sasolwax Waksol A is suitable for paint strippers for wood surfaces and protection for wood surfaces.', 'Product Type: Waxes', 'Chemical Composition: Fischer-Tropsch unmicronized waxes', and a 'Download' link. At the bottom of the selector box, there is a link 'Access full datasheet'. The footer of the page includes a 'Last edited August 06, 2022' timestamp and social media sharing icons. To the right, a sidebar for 'RESONAC' lists 'Showa Denko Group becomes Resonac' and a list of products with the same brand name: Sasolwax 3715, Sasolwax 5203, Sasolwax 3971, Sasolwax 3279, and Sasolwax 5803. A 'View more (25)' link is also present.

**29.8** Further, the literature in respect of Fischer-Tropsch Hard Waxes of the foreign manufacturer viz. M/s Sasol Limited, available in website [http://www.sasolgermany.de/sasolwax\\_document](http://www.sasolgermany.de/sasolwax_document), shows that Sasol's Fischer-Tropsch hard waxes are synthetically produced by using gas-to-liquids (GTL) technology, and has application in many sectors viz. Hot Melt Adhesives, Polymer Processing, Asphalt Additive, Printing Inks, Paints, Varnishes and coatings, Textiles and **Polishes**. Usage of Fischer-Tropsch Hard Wax manufactured by M/s. Sasol in the manufacture of Polishes as narrated in this product literature, is as under-

*Polish producers use waxes to fulfill the basic function of polishes, i.e. protection, beautification and cleaning. **Sasol's Fischer-Tropsch hard waxes** find applications in a range of polishes that include the traditional solvent and emulsion pastes as well as liquid emulsion polishes.*

**29.9** In the matter of another material viz. **C9-C11 n- paraffin**, one of the contents of the product in question viz. ‘Waksol 9-11A grade’, it is seen from the website of M/s. Sasol, the foreign manufacturer, <https://products.sasol.com/pic/products/home/grades/ZA/5c9-c11-n-paraffin/index.html> that **C9-C11 n-Paraffin** is a clear colorless hydrocarbon liquid and flammable liquid with a very slight paraffinic odour and has application in many sectors including in catalyst carrier, solvent carrier in

pesticide aerosols, chlorinated paraffin, cleaning agents, **Polishes**. The scanned image of the said literature is as under-

																													
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<small>Below you find examples of Sasol's typical products in this category. For all other requirements please contact us at <a href="mailto:www@sasol.com">www@sasol.com</a></small>																													
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; padding: 5px;">Products</th><th style="text-align: left; padding: 5px;">Description</th><th style="text-align: left; padding: 5px;">Application</th></tr> </thead> <tbody> <tr> <td style="padding: 5px;"><a href="#">C10-C13 n-paraffin</a></td><td style="padding: 5px;">C10-C13 n-paraffin is a clear, colourless hydrocarbon liquid, flammable and odourless.</td><td style="padding: 5px;">Solvent carrier in pesticide aerosols, Rolling oils, Fibre spinning lubricant, Cleaning agents, Drilling fluid, Chlorinated paraffin,..</td></tr> <tr> <td style="padding: 5px;"><a href="#">C12-C13 n-paraffin</a></td><td style="padding: 5px;">C12-C13 n-paraffin is a clear colourless hydrocarbon liquid, flammable and odourless.</td><td style="padding: 5px;">Spinning fibre, Rolling oils, Mining solvent, Agricultural chemicals</td></tr> <tr> <td style="padding: 5px;"><a href="#">C14-C20 n-paraffin</a></td><td style="padding: 5px;">C14-C20 n-paraffin is a clear colourless hydrocarbon liquid, flammable and odourless.</td><td style="padding: 5px;">Chlorinated paraffin, Lamp oils, Aerosol Degreasers, Dust suppressants, Plasticisers, Lubricants</td></tr> <tr> <td style="padding: 5px;"><a href="#">C5-C6 n-paraffin</a></td><td style="padding: 5px;">C5-C6 n-paraffin is a clear colourless hydrocarbon liquid, highly flammable liquid and vapour, with a slight paraffinic smell.</td><td style="padding: 5px;">Seed oil extraction, Vulcanisation of rubber for tyres, Blending with thinners, Cleaning agents, Adhesives, Chemicals</td></tr> <tr> <td style="padding: 5px;"><a href="#">C7-C8 n-paraffin</a></td><td style="padding: 5px;">C7-C8 n-paraffin is a clear colourless hydrocarbon liquid, highly flammable liquid and vapour, with a slight paraffinic smell.</td><td style="padding: 5px;">Catalyst carrier, Solvent for paints, Lubricants</td></tr> <tr> <td style="padding: 5px;"><a href="#">C9-C11 n-paraffin</a></td><td style="padding: 5px;">C9-C11 n-paraffin is a clear colourless hydrocarbon liquid and flammable liquid with a very slight paraffinic odour.</td><td style="padding: 5px;">Catalyst carrier, Solvent carrier in pesticide aerosols, Chlorinated paraffin, Cleaning agents, Polishes</td></tr> <tr> <td style="padding: 5px;"><a href="#">KOGASIN Solvent</a></td><td style="padding: 5px;">KOGASIN Solvent is a clear colourless hydrocarbon liquid which is flammable and odourless.</td><td style="padding: 5px;">Wood coatings, Firelighters</td></tr> <tr> <td style="padding: 5px;"><a href="#">SSX 210</a></td><td style="padding: 5px;">Clear colourless hydrocarbon liquid, flammable, odourless.</td><td style="padding: 5px;">Spinning fibre, Rolling oils, Agricultural chemicals, Mining solvent</td></tr> </tbody> </table>			Products	Description	Application	<a href="#">C10-C13 n-paraffin</a>	C10-C13 n-paraffin is a clear, colourless hydrocarbon liquid, flammable and odourless.	Solvent carrier in pesticide aerosols, Rolling oils, Fibre spinning lubricant, Cleaning agents, Drilling fluid, Chlorinated paraffin,..	<a href="#">C12-C13 n-paraffin</a>	C12-C13 n-paraffin is a clear colourless hydrocarbon liquid, flammable and odourless.	Spinning fibre, Rolling oils, Mining solvent, Agricultural chemicals	<a href="#">C14-C20 n-paraffin</a>	C14-C20 n-paraffin is a clear colourless hydrocarbon liquid, flammable and odourless.	Chlorinated paraffin, Lamp oils, Aerosol Degreasers, Dust suppressants, Plasticisers, Lubricants	<a href="#">C5-C6 n-paraffin</a>	C5-C6 n-paraffin is a clear colourless hydrocarbon liquid, highly flammable liquid and vapour, with a slight paraffinic smell.	Seed oil extraction, Vulcanisation of rubber for tyres, Blending with thinners, Cleaning agents, Adhesives, Chemicals	<a href="#">C7-C8 n-paraffin</a>	C7-C8 n-paraffin is a clear colourless hydrocarbon liquid, highly flammable liquid and vapour, with a slight paraffinic smell.	Catalyst carrier, Solvent for paints, Lubricants	<a href="#">C9-C11 n-paraffin</a>	C9-C11 n-paraffin is a clear colourless hydrocarbon liquid and flammable liquid with a very slight paraffinic odour.	Catalyst carrier, Solvent carrier in pesticide aerosols, Chlorinated paraffin, Cleaning agents, Polishes	<a href="#">KOGASIN Solvent</a>	KOGASIN Solvent is a clear colourless hydrocarbon liquid which is flammable and odourless.	Wood coatings, Firelighters	<a href="#">SSX 210</a>	Clear colourless hydrocarbon liquid, flammable, odourless.	Spinning fibre, Rolling oils, Agricultural chemicals, Mining solvent
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<a href="#">C9-C11 n-paraffin</a>	C9-C11 n-paraffin is a clear colourless hydrocarbon liquid and flammable liquid with a very slight paraffinic odour.	Catalyst carrier, Solvent carrier in pesticide aerosols, Chlorinated paraffin, Cleaning agents, Polishes																											
<a href="#">KOGASIN Solvent</a>	KOGASIN Solvent is a clear colourless hydrocarbon liquid which is flammable and odourless.	Wood coatings, Firelighters																											
<a href="#">SSX 210</a>	Clear colourless hydrocarbon liquid, flammable, odourless.	Spinning fibre, Rolling oils, Agricultural chemicals, Mining solvent																											

**29.10** 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) Waxes .....impregnated 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, WAKSOL9-11 A is a Wax (80% proportion) and is impregnated with a solvent (C9-11). It gets covered by example of “ (1) Waxes .....impregnated 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 is supported by the fact that there is use of white oil/M.T.O in emulsified preparations.

**29.11** 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 maintenance of Wooden furniture, and similar preparations for leather or Wood work.

**29.12** In view of the scope of 3405 as laid out above, after considering the clauses of exclusions under 2712, and other evidences as discussed above, WAKSOL 9-11 A is correctly classifiable under 34052000 as preparations similar to polishes/creams/pastes of CTH3405, 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 in terms of HSN details), which cannot be the legislative intent.

**30. 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:**

**30.1.** The HSN of 3405 states that -

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

**30.2** 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. 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.

**30.3** 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 it is raw material for some other products.

**30.4** 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.

**31** 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.) wherein Hon'ble SC 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."*

**31.1** In view of the above, I find that the M/s. Shivtek Industries Pvt. Ltd have mis-classified the subject goods 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 9-11A' is correctly classifiable under Tariff Item 34052000, and the classification of such products done by the importer-noticee under Tariff Item 27101990 is liable to be rejected.

**32. Whether M/s. Shivtek Industries Pvt. Ltd are liable to pay the differential amount of Customs Duty of Rs. Rs.64,85,925/- (Rupees Sixty Four Lakh, Eighty Five Thousand, Nine Hundred and Twenty Five Only) as detailed in Annexure A of the Show Cause Notice under Section 28(4) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962?**

**32.1** In view of aforesaid discussion, I find that Noticee has mis-classified the impugned goods viz. 'Waksol 9-11A Grade' under Custom Tariff Item No. 27101910 instead of merit classification under Customs Tariff Item No. 34052000.I find that Noticee had filed Bills of Entry covering the period from

28.03.2017 to 12.07.2019 as mentioned in Annexure-A to the Show Cause Notice for clearance of goods supplied by M/s. Sasol Chemical, South Africa and declared the description of goods as 'Waksol 9-11A Grade' with generic description as Petroleum Oil:70% or more of petroleum oils with FP>25 degree. The Noticee with clear intent to evade the payment of customs duty classified the said goods under Customs Tariff Item No 27101990 and claimed the benefit of Sr.No.147 of Notification No.50/2017-Cus dated 30.06.2017. Merit classification of the goods is Customs Tariff Heading No.34052000. I find that Noticee inspite of having been in knowledge of nature and properties content in imported goods, with sheer motive to evade the payment of customs duty by wrong availment of benefit of concessional rate of Duty available as per Sr.No.147 of Notification No.50/2017-Cus dated 30.06.2017 mis-classified and mis-declared the same in Bills of Entry and thereby short paid the duty of **Rs.64,85,925/-**. Hence, the provisions of Section 28(4) of Customs Act, 1962 for invoking extended period to demand the short paid Duty are clearly attracted in this case. I, therefore, hold that the differential Duty of **Rs.64,85,925/-** are required to be demanded and recovered from M/s. Shivtek Industries Pvt. Ltd invoking the provisions of extended period under Section 28(4) of Customs Act, 1962 along with applicable interest under Section 28AA of Customs Act, 1962.

**32.2** I find that the Noticee has furnished Bank Guarantee of Rs. 15,00,000/- for differential duty which is required to be encashed and adjusted towards recovery of differential duty of Rs. 64,85,925/- confirmed alongwith interest.

**33. Whether the imported goods viz. Waksol 9-11A Grade, valued at Rs.9,99,37,216/- are liable liable for confiscation under Section 111 (m) of the Customs Act, 1962?**

**33.1** I find that 138.042 MTs of "**Waksol 9-11A Grade**" imported under the Bills of Entry No. 3979553 dated 08.07.2019 valued at Rs. 65,28,075/- had been seized under Section 110(1) of Customs Act, 1962 being liable for confiscation under Section 111(m) of Customs Act, 1962 which was subsequently released provisionally by the competent authority on request of M/s. Shivtek Industries Pvt. Ltd., under provisions of Section 110A of the Customs Act, 1962.

**33.2** Apart from the above seized goods, M/s. Shivtek Industries Pvt. Ltd had imported 1928.6 MTS of "**Waksol 9-11A Grade**" totally valued at Rs. **9,34,09,141/-** cleared by the Noticee by mis classification under Customs Tariff Item No. 27101990 and wrong availment of the benefit of exemption from payment of Customs Duty as per Sr.No.147 of Notification No.50/2017-Cus dated 30.06.2017 for period from 28.03.2018 to 12.07.2019 (except seized goods imported vide B/E No. 3979553 dated 08.07.2019. Though the said goods were not available for seizure but they had been imported in contravention of the provisions of Section 46(4) of the Customs Act, 1962. For these contraventions and violations, the aforementioned goods fall under the ambit of smuggled goods within meaning of Section 2(39) of the Customs Act, 1962 and hence I hold them liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962 in as much as they wrongly availed the benefit of Sr.No.147 of Notification No.50/2017-Cus dated 30.06.2017 and mis-classified under Customs Tariff Item No. 27101990 instead of merit classification under Customs Tariff Item No. 34052000.

**33.3** As the impugned goods are found liable to confiscation under Section 111 (m) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125(1) of Customs Act, 1962 can be imposed in

lieu of confiscation in respect of the imported goods, which are not physically available for confiscation. Section 125 (1) of the Customs Act, 1962 reads as under: -

**"125 Option to pay fine in lieu of confiscation –**

*(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit..."*

**33.4** I find that the Noticee has wrongly availed the benefit Sr.No.147 of Notification No.50/2017-Cus dated 30.06.2017 by mis classification of impugned goods under Customs Tariff Item No. 27101990. I rely on the decision in the matter of Weston Components Ltd. v. Collector reported as 2000 (115) E.L.T. 278 (S.C.) wherein Hon'ble Supreme Court has held that:

*"It is contended by the learned Counsel for the appellant that redemption fine could not be imposed because the goods were no longer in the custody of the respondent-authority. It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine".*

In view of the above, I find that seized 138.042 MTs of "**Waksol 9-11A Grade**" imported under the Bills of Entry No. 3979553 dated 08.07.2019 valued at Rs. 65,28,075/- which was subsequently provisionally released on furnishing Bond and Bank Guarantee are liable for confiscation under Section 111(m) of the Customs Act, 1962. Further, I find that the bond for the full value of seized goods executed for provisional release of said seized goods is required to be enforced and Bank Guarantee of Rs 15,00,000/-furnished thereof is also required to be encashed.

**33.5** I further find that even in the case where goods are not physically available for confiscation, redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad)** wherein the Hon'ble High Court of Madras has observed as under:

"....  
....  
....

23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operates in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and

irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fines in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).

....  
....  
....

**33.6** I also find that Hon'ble High Court of Gujarat by relying on this judgment, in the case of **Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.)**, has held *inter alia* as under: -

“.  
.  
.”

**174.** ..... In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the following has been observed in Para-23;

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of

*redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."*

**175. We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above."**

In the present case, it is clearly apparent that M/s. Shivtek Industries Pvt. Ltd has wrongly availed the benefit of Sr.No.147 of Notification No.50/2017-Cus dated 30.06.2017 with clear intent to evade the payment of duty. Therefore, the contention of M/s. Shivtek Industries Pvt. Ltd., that in absence of availability of goods, cannot be confiscated is not tenable.

In view of the above, I find that 1928.6 MTS of "**Waksol 9-11A Grade**" totally valued at **Rs. 9,34,09,141/- (Rupees Nine Crore, Thirty Four Lakh, Nine Thousand, One Hundred and Forty One only)** (except goods imported vide Bills of Entry No B/E No. 3979553 dated 08.07.2019) though not available are liable for confiscation under Section 111(m) of the Customs Act, 1962.

**33.7** In view of the above, I find that redemption fine under Section 125 (1) is liable to be imposed in lieu of confiscation of subject goods having assessable value of **Rs.9,99,37,216/-** as detailed in Annexure A-of the Show cause Notice.

**34 Whether M/s. Shivtek Industries Pvt. Ltd are liable for penalty under the provisions of Section 114A, of the Customs Act, 1962?**

**34.1** I find that demand of differential Customs Duty amounting to **Rs.64,85,925/-** has been made under Section 28(4) of the Customs Act, 1962, which provides for demand of Duty not levied or short levied by reason of collusion or wilful mis-statement or suppression of facts. Hence as a naturally corollary, penalty is imposable on M/s. Shivtek Industries Pvt. Ltd., under Section 114A of the Customs Act, which provides for penalty equal to Duty plus interest in cases 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. In the instant case, the ingredient of suppression of facts by M/s. Shivtek Industries Pvt. Ltd., has been clearly established as discussed in foregoing paras and hence, I find that this is a fit case for imposition of quantum of penalty equal to the amount of Duty plus interest in terms of Section 114A ibid.

**34.2 Whether M/s. Shivtek Industries Pvt. Ltd are liable for penalty under the provisions of Section 112(a)/112 (b), of the Customs Act, 1962?**

**34.3** I find that fifth proviso to Section 114A stipulates that "where any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114" Hence, I refrain from imposing penalty on M/s. Shivtek Industries Pvt. Ltd., under Section 112 of the Customs Act, 1962 as penalty has been imposed on them under Section 114A of the Customs Act, 1962.

**34.4 Whether M/s. Shivtek Industries Pvt. Ltd., are liable for penalty under the provisions of Section 114AA of the Customs Act, 1962?**

**34.5** I also find that the Show Cause Notice proposes to impose penalty on the M/s. Shivtek Industries Pvt. Ltd., under Section 114AA of the Customs Act, 1962. The text of the said statute is reproduced under for ease of reference:

*"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."*

**34.6** I find that M/s. Shivtek Industries Pvt. Ltd was well aware about the properties and contents of imported goods viz. 'Waksol 9-11A Grade' and its merit classification under Customs Tariff Item No. 34052000. However, with clear intent to evade the payment of Customs duty and wrong availment of benefit of Sr.No.147 of Notification No.50/2017-Cus dated 30.06.2017 which was available to Custom Tariff Item No. 27101990, they mis classified the said imported goods under Custom Tariff Item No. 27101990 and intentionally declared Sr.No.147 of Customs Notification No. No.50/2017 dated 30.06.2017 in Bill of Entry with clear intent to evade the payment of duty and contravened the provision of Section 46 (4) of the Custom Act, 1962 by making *false declarations in the Bill of Entry*. Hence, I find that M/s. Shivtek Industries has knowingly and intentionally mis declared the false/incorrect description of goods and its Tariff Item No. and Notification No. in respect of imported goods. Hence, for the said act of contravention on their part, M/s. Shivtek Industries Pvt. Ltd is liable for penalty under Section 114AA of the Customs Act, 1962.

**34.7** Further, to fortify my stand on applicability of Penalty under Section 114AA of the Customs Act, 1962, I rely on the decision of Principal Bench, New Delhi in case of Principal Commissioner of Customs, New Delhi (import) Vs. Global Technologies & Research (2023)4 Centax 123 (Tri. Delhi) wherein it has been held that "*Since the importer had made false declarations in the Bill of Entry, penalty was also correctly imposed under Section 114AA by the original authority*".

**35. Whether Shri Shiv Kumar Nenwani, Director of M/s. Shivtek Industries Pvt. Ltd is liable for Penalty Section 112(a) & (b), of the Customs Act, 1962 ?**

**35.1** I find that Shri Shiv Kumar Nenwani, Director of M/s. Shivtek Industries Pvt. Ltd., was responsible for import and involved in the decision making in the classification of the imported "Waksol 9-11A Grade" and also in approving mis- classification of the same under Customs Tariff Item No.27101990 in the Bills of Entry and thereby they wrongly claimed the benefit of Sr.No.147 of Notification No.50/2017-Cus dated 30.06.2017 inspite of having the knowledge of the nature, properties and content of the subject goods and mis classified under Customs Tariff Item No. 27101990 instead of its merit classification 34052000. Thus his act and omission rendered the goods liable for confiscation under Section 111 (m) of the Customs Act. 1962 and thereby Shri Shiv Kumar Nenwani, Director rendered himself liable for penal action under Section 112 (a) (ii) of the Customs Act,1962.

**36.** In view of the discussions and findings in paras supra, I pass the following order:

**::ORDER::**

**36.1** I reject the classification of imported goods i.e. "Waksol 9-11A Grade" having total Quantity 2,067 MTs, totally valued at **Rs.9,99,37,216/- (Rupees Nine Crore, Ninety Nine Lakh, Thirty Seven Thousand, Two Hundred and Sixteen Only)** covered under Bills of Entry as detailed in Annexure-A to the Show Cause Notice, classified by M/s. Shivtek Industries Private Limited under Customs Tariff Item No.27101990 and order to re-classify the same under Customs Tariff Item No.34052000 of the Customs Tariff Act, 1975.

**36.2** I confirm the differential Duty amount aggregating **Rs.64,85,925/- (Rupees Sixty Four Lakh, Eighty Five Thousand, Nine Hundred and Twenty Five Only)** for the period from 28.03.2018 to 12.07.2019 payable on import of "Waksol 9-11A Grade" valued at **Rs.9,99,37,216/-** as detailed in Annexure-A attached to the Show Cause Notice and order to recover the same under Section 28(4) of the Customs Act, 1962 from M/s. Shivtek Industries Private Limited.

**36.3** I order for the recovery of interest at the applicable rate from M/s. Shivtek Industries Private Limited on the said differential Customs Duty as mentioned at Para 36.2 above under Section 28AA of the Customs Act, 1962.

**36.4** I hold the seized 138.042 Mts of "Waksol 9-11A Grade" imported under the Bill of Entry No. 3979553 dated 08.07.2019 valued at **Rs. 65,28,075/- (Sixty Five Lakh, Twenty Eight Thousand and Seventy Five only)** liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I give M/s. Shivtek Industries Pvt. Ltd, the option to redeem the goods on payment of Fine of **Rs.3,25,000/- (Rupees Three Lakh and Twenty Five Thousand only)** under Section 125 of the Customs Act, 1962.

**36.5** I order enforcement of the Bond valued at **Rs. 65,28,075/- (Sixty Five Lakh, Twenty Eight Thousand and Seventy Five only)** furnished for provisional release of the seized goods 138.042 Mts of "Waksol 9-11A Grade" imported under the Bill of Entry No. 3979553 dated 08.07.2019 and order to encash and appropriate the Bank Guarantee of **Rs.15,00,000/- (Rupees Fifteen Lakhs only)** towards the above confirmed duty, Interest and redemption Fine as mentioned in Para 36.2, 36.3 and Para 36.4 above.

**36.6** I hold the 1928.6 MTS of "Waksol 9-11A Grade" totally valued at **Rs. 9,34,09,141/- (Rupees Nine Crore, Thirty Four Lakh, Nine Thousand, One Hundred and Forty One only)** (except goods imported vide Bills of Entry No B/E No. 3979553 dated 08.07.2019) liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I give M/s. Shivtek Industries Pvt. Ltd, the option to redeem the goods on payment of Fine of **Rs. 45,00,000/- (Rupees Forty Five Lakh only)** under Section 125 of the Customs Act, 1962.

**36.7** I impose a penalty of **Rs.64,85,925/- (Rupees Sixty Four Lakh, Eighty Five Thousand, Nine Hundred and Twenty Five Only)** plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed above on M/s. Shivtek Industries Private Limited under Section 114A of the Customs Act, 1962. However, in view of the first and second proviso to Section 114A of the Customs Act, 1962, if the amount of Customs Duty confirmed and interest thereon is paid within a period of thirty days from the date of the communication of this Order, the penalty shall be twenty five percent of the Duty, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days;

**36.8** I refrain from imposing any penalty on M/s. Shivtek Industries Private Limited under Sections 112 (a) & (b) of the Customs Act, 1962.

**36.9** I impose a penalty of **Rs. 2,00,000/- (Rupees Two Lakh only)** on Shri Shiv Kumar Nenwani, Director of M/s. Shivtek Industries Private Limited under Section 112(a)(ii) of the Customs Act, 1962.

**37.** This order is issued without prejudice to any other action that may be taken under the provisions of the Customs Act, 1962 and Rules/Regulations framed thereunder or any other law for the time being in force in the Republic of India.

**38.** The Show Cause Notice No. VIII/10-02/Commr/O&A/2022-23 dated 14.02.2023 is disposed off in above terms.



2024  
S. K. Sharma  
19.07.2024

**(Shiv Kumar Sharma)**  
Principal Commissioner

**DIN: 20240771MN000000EB13**

**BY Speed Post /Hand Delivery/E Mail:**

F.No.VIII/10-02/Commr./O&A/2022-23

Date: 19.07.2024

**By RPAD/ By Hand Delivery/Email/Speed Post**

To,

(i) **M/s. Shivtek Industries Private Limited, CH-1 & CH-2/C, GIDC, Dahej, Tehsil- Vagra, Distt- Bharuch, Gujarat- 392130.**

Corporate office:

**M/s. Shivtek Industries Private Limited, 802-804, Pearl Best Height II NetajiSubhash Place, Pitampura Delhi 110034.**

(ii) **Shri Shiv Kumar Nenwani, Director of M/s Shivtek Industries Private Limited, CH-1 & CH-2/C, GIDC, Dahej, Tehsil- Vagra, Distt- Bharuch, Gujarat- 392130.**

**Copy to:-**

1. The Chief Commissioner, Customs, Gujarat Zone, Ahmedabad for information please.
2. The Additional Commissioner of Customs (TRC), Ahmedabad for information.
3. The Assistant/Deputy Director, DRI, Regional Unit, Plot No. 193, OSLO, Sector 4, Gandhidham (Kutch), Gujarat for information.
4. The Deputy Commissioner, Customs (Import), Hazira Port, Surat for information.
5. The Deputy Commissioner, Customs, SIIB, Surat for information.
6. The Superintendent of Customs (Systems), Ahmedabad in PDF format for uploading on the website of Customs Commissionerate, Ahmedabad.
7. Guard File.