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

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 10335 of 2021-DB

(Arising out of OIO-KND-CUSTM-000-COM-15-20-21 Dated-03/02/2021 passed by Commissioner of CUSTOMS-KANDLA)

PANOLI INTERMEDIATES INDIA PVT LTD **........Appellant**
105 Motha Building 4 Bhikaji Cama Avenue,
New Delhi

VERSUS

C.C.-KANDLA **........Respondent**
Custom House, Near Balaji Temple,
Kandla, Gujarat

WITH

- **Customs Appeal No. 10334 of 2021 (SHIVA EXIM ENTERPRISES)**
- **Customs Appeal No. 10336 of 2021 (KUTCH CHEMICALS INDUSTRIES LTD)**
- **Customs Appeal No. 10338 of 2021 (SHIVTEK INDUSTRIES PRIVATE LIMITED)**
- **Customs Appeal No. 10470 of 2021 (RISHI KIRAN ROADLINES)**
- **Customs Appeal No. 10647 of 2021 (BALAJI PLASTICIZERS & CHEMICALS PROP. BALAJI PIPE INDUSTRIES (P) LTD)**
- **Customs Appeal No. 10648 of 2021 (MADAN CHEMICALS PVT LTD)**
- **Customs Appeal No. 10649 of 2021 (AJANTA CHEMICALS INDUSTRIES)**
- **Customs Appeal No. 10650 of 2021 (AGARWAL CHEMICALS)**
- **Customs Appeal No. 10651 of 2021 (SHIVLAL GOYAL)**
- **Customs Appeal No. 10652 of 2021 (B.G. CHEMICALS)**
- **Customs Appeal No. 10653 of 2021 (Orient Micro Abrasive Limited)**
- **Customs Appeal No. 10654 of 2021 (AMIT PLASTICIZERS)**
- **Customs Appeal No. 10655 of 2021 (K C GOYAL)**
- **Customs Appeal No. 10656 of 2021 (CHLORO PARAFFIN INDUSTRIES)**
- **Customs Appeal No. 10666 of 2021 (ALWAR PARAFFIN & ALLIED PRODUCTS PVT LTD)**
- **Customs Appeal No. 10671 of 2021 (HIMCHEM ENTERPRISES)**
- **Customs Appeal No. 10672 of 2021 (V S POLYMERS PVT LTD)**

- **Customs Appeal No. 10673 of 2021 (PRAYAG CHEMICALS PVT LTD)**
- **Customs Appeal No. 10674 of 2021 (GRASIM INDUSTRIES LTD)**
- **Customs Appeal No. 10675 of 2021 (SUNIL KUMAR NENWANI)**
- **Customs Appeal No. 10676 of 2021 (HARYANA CHEMICALS)**
- **Customs Appeal No. 10677 of 2021 (STANADARD CHEMICALS)**
- **Customs Appeal No. 10678 of 2021 (SWASTIK PLASTICIZER AND PVC PIPES INDORE PVT LTD)**
- **Customs Appeal No. 10679 of 2021 (GANGOTRI CHLOROCHEM P LTD)**
- **Customs Appeal No. 10680 of 2021 (K G INDUSTRIES)**
- **Customs Appeal No. 10681 of 2021 (IMC LTD)**
- **Customs Appeal No. 10682 of 2021 (FLOWTECH CHEMICALS PRIVATE LTD)**
- **Customs Appeal No. 10683 of 2021 (SHANTI CHEMICALS)**
- **Customs Appeal No. 10684 of 2021 (V M A ENTERPRISES P LTD)**
- **Customs Appeal No. 10685 of 2021 (SAPPHIRE INDUSTRIES PRODUCTS PVT LTD)**
- **Customs Appeal No. 10762 of 2021 (BUDHIRAJA POLYMERS P LTD)**
- **Customs Appeal No. 10763 of 2021 (COMPETENT POLYMERS P LTD)**
- **Customs Appeal No. 10764 of 2021 (R K CHEMICALS)**

(Arising out of OIO-KND-CUSTM-000-COM-15-20-21 Dated-03/02/2021 passed by Commissioner of CUSTOMS-KANDLA)

APPEARANCE:
Shri. Pramod Kumar Rai & Shri. Jayant Kumar Advocates for the Appellant
Shri. Sanjay Kumar, Superintendent (AR) for the Respondent

CORAM: HON'BLE MR. RAJU, MEMBER (TECHNICAL)
HON'BLE MR. SOMESH ARORA MEMBER (JUDICIAL)

Final Order No. A/ 10806-10839 /2023

DATE OF HEARING: 16.03.2023
DATE OF DECISION:06.04.2023

SOMESH ARORA

The present bunch of appeal has been filed by various importers and their associates who were subjected to personal penalty in adjudication proceedings. The common facts in brief are that the appellants M/s. Panoli Intermediates India Pvt. Ltd, along with others Imported Waxsol series of products such as Waxsol-A, Waxsol 9-11A, Waxsol-911B and Waksol-B etc,. The classification of the products was sought by the importers under CTH 27101990 of Customs Act, 1925. The matter was investigated by DRI which was of the opinion that Customs Tariff Heading No. 34052000 was the proper classification head for such imports, made through Kandla port and Hazira Port. The learned counsel representing all the parties made categorical statement at the bar that he is not pressing on the point of proper officer for D.R.I Officers not being competent to issue show cause notice for entire bunch and would like the matter to be decided on its own merits by making concession on point of jurisdiction of "proper officer" and competence of D.R.I, Appeal No. C/ 10335/2021, was chosen by him for the purposes of reference and for narration of specific brief facts etc. The period involved of imports is from June, 2014 to April 2019. The product data sheet as produced at para 15 of the impugned order brings out the reason for probe by the department, same is as follows:-

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

Submissions of the Advocate:

2. Advocate for the appellants agreed that CTH of 2710 proposed and claimed initially by them (after the same was tested by the department through chemical analysis) was incorrect. Learned Advocate pointed out that the products which are various grades of proprietary products

WAKSOL are manufactured synthetically through Fischer Tropsch Process and are called Fischer Tropsch waxes. They are nothing but mixtures of hydrocarbons. For example, Waksol A and C9-C11 n-paraffin are blended in a proprietary ratio(i.e., intermixed) to produce **Waksol 9-11A** which is liquid at room temperature (20 degree centigrade).

Uses of the imported product

2.1 The Waksol grades of products are used in the manufacture of chlorinated paraffin which is further used in the PVC industries, shoe industries, polymer industries and wire and PVC pipe industries and marine paint industries etc. as a plasticizer and are therefore intermediary products

Competing Classification:

2.2 In the present case there are four competing headings for the classification of Waksol grade of products which are mentioned below:

CTH	CTH Description	Remarks
2710	Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils	Initially claimed by the appellant
2712	Petroleum jelly, paraffin wax, microcrystalline petroleum wax, slack wax, ozokerite, lignite wax, peat wax, other mineral waxes, and similar products obtained by synthesis or by other processes, whether or not coloured	claimed by the appellant before adjudicating Authority as correct CL.
3404	Artificial waxes and prepared waxes	Initially department wanted to classify under this CTH
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	CTH alleged by the department in the SCN and confirmed in the Impugned OIO

	preparations), excluding waxes of heading 3404	

2.3 The paraffin Oil content in the imported product is less than 70% so classification under CTH 2710 is therefore ruled out by them. The department has not sought classification under CTH 3404 so, this is also ruled out. <u>The competing classification is reduced to CTH 2712 & CTH 3405</u>.

<u>CTH 3405</u>

2.4 CTH 3405 covers consumer products/end products like polishes and creams for footwear, furniture etc. It does not cover raw materials for manufacturing of polishes or creams for furniture. The imported product is an industrial raw material for manufacture of another industrial raw material i.e. chlorinated paraffin wax and thus cannot be covered under CTH 3405.

2.5 The HSN explanatory notes to CTH 3405 (stated to be of 2017 edition by the advocate on query) is reproduced below:

> *This heading covers <u>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.</u> 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) <u>Waxes and polishes consisting of waxes impregnated with spirits of turpentine or emulsified in an aqueous medium</u> 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.*

<u>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</u>.
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).

The heading also excludes:
(a) Abrasive powders, when not mixed (generally Chapter 25 or 28).
(b) Whitenings for footwear, in tablets, and prepared liquid dyes for chamois-leather footwear (heading 32.10).
(c) Degras and artificial degras (heading 15.22); other oils and greases for leather dressing (Chapter 15, headings 27.10, 34.03, 38.24, etc.).
(d) Dry-cleaning fluids and stain removers, for cleaning clothing, which are classified according to their composition (usually as petroleum spirit, heading 27.10, or as products of heading 38.14 or 38.24).

2.6 The learned advocate submitted that as per the explanatory notes, CTH 3405 covers finished products which are often put up for retail sale. 3405 does not cover the raw materials like Waksol series products imported by the appellant. The product imported by the noticee is an industrial raw material for manufacture of Chlorinated Paraffin waxes (CPW) and is not a finished product put up for retail sale. <u>Further, the products of CTH 3405 is dispersed in or dissolved in a liquid medium i.e., impregnated with spirits of turpentine or emulsified in an aqueous medium..</u> It is neither dispersed nor dissolved in a liquid medium. So, the classification under CTH 3405 is ruled out.

<u>CTH 2712</u>

2.7 CTH 2712 specifically covers all type of paraffin waxes irrespective of their oil content, Fischer-Tropsch waxes etc. CTH 2712 of the Customs Tariff Act, 1975 is reproduced below:

Tariff Item	Description of article
2712	**Petroleum jelly, paraffin wax, microcrystalline petroleum wax, slack wax, ozokerite, lignite wax, peat wax, other mineral waxes, and similar products obtained by synthesis or by other processes,**

	whether or not coloured
2712 10	- Petroleum jelly :
2712 10 10	--- Crude
2712 10 90	--- Other
2712 20 00	- Paraffin wax containing by weight less than 0.75% of oil
2712 90	- Other :
2712 90 10	--- Micro-crystalline petroleum wax
2712 90 20	--- Lignite wax
2712 90 30	**--- Slack wax**
2712 90 40	**---** Paraffin wax containing by weight 0.75% or more of oil
2712 90 90	--- Other

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

> *5. In heading 3404, subject to the exclusions provided below, the expression "artificial waxes andprepared 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) <u>products of a waxy character with a basis of one or more waxes</u> 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;*
> > *<u>(iii) mineral waxes and similar products of heading 2712 whether or not intermixed or</u>merely coloured; or*
> > *(iv) waxes mixed with, dispersed in or dissolved in a liquid medium (headings 3405, 3809,etc.).*

4 Further the HSN explanatory to CTH 3404 states that synthetically produced waxes like Fischer-Tropsch waxes consisting essentially of hydrocarbons are excluded from CTH 3404 and will fall under CTH 2712.

The relevant extract of HSN explanatory notes to CTH 3404 is reproduced below:

> *This heading covers artificial waxes (sometimes known in industry as "synthetic waxes") and prepared waxes, as defined in Note 5 to this Chapter, which consist of or contain relatively high molecular weight organic substances and which are not separate chemically defined compounds. These waxes are :-*
>
> *(A) Chemically produced organic products of a waxy character, whether or not water-soluble.* ***Waxes of heading 27.12, produced synthetically or otherwise (e.g., Fischer-Tropsch waxes consisting essentially of hydrocarbons) are, however, excluded.*** *Water-soluble waxy products having surface-active properties are also excluded (heading 34.02).*
>
> *(B) …………………………..*
>
> *(C) …………………………..*

5 HSN explanatory notes (2017 edition) to CTH 2712 needs to be seen in above context, which reads as under.

> ***(A) Petroleum jelly.***
>
> *Petroleum jelly is unctuous to the touch. It is white, yellowish or dark brown in colour. It is obtained from the residues of the distillation of certain crude petroleum oils or by mixing fairly high viscosity petroleum oils with such residues or by mixing paraffin wax or ceresine with a sufficiently refined mineral oil. The heading includes the jelly, whether crude (sometimes called petrolatum), decolourised or refined. It also covers petroleum jelly obtained by synthesis.*
>
> *To fall in this heading petroleum jelly must have a congealing point, as determined by the rotating thermometer method (ISO 2207 equivalent to the ASTM D 938 method), of not less than 30 °C, a density at 70 °C of less than 0.942 g/cm3, a Worked Cone Penetration at 25 °C, as determined by the ISO 2137 method (equivalent to the ASTM D 217 method), of less than 350, a Cone Penetration at 25 °C, as determined by the ISO 2137 method (equivalent to the ASTM D 937 method), of not less than 80.*
>
> *This heading does not, however, include petroleum jelly, suitable for use for the care of the skin, put up in packings of a kind sold by retail for such use (heading 33.04).*
>
> ***(B) Paraffin wax, microcrystalline petroleum wax, slack wax, ozokerite, lignite wax, peat wax, other mineral waxes, and similar products obtained by synthesis or by other processes, whether or not coloured.***

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

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

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

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

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

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

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

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

However, the following products are classified in heading 34.04 :
(a) Artificial waxes obtained by the chemical modification of lignite wax or other mineral waxes.
(b) Mixtures, not emulsified or containing solvents, consisting of :
(i) Waxes of this heading mixed with animal waxes (including spermaceti), vegetable waxes or artificial waxes.
(ii) Waxes of this heading mixed with fats, resins, mineral substances or other materials, provided they have a waxy character.

6 The learned Advocate pointed out that revenue has referred to congealing point under Petroleum jelly category (A) of HSN, which was never claimed by them, for seeking exclusion from CTH 2712. Appellant

has claimed category(B) of HSN i.e., Paraffin wax/slack wax to be covered under CTH 2712.

7 It was submitted by the advocate for the appellants that Waksol is correctly classified under Tariff Entry 2712 90 30 in view of the following:

i. *It is obtained from a synthetic route by Fischer Tropsch process where starting material is natural gas, reformed into synthesis gas. After the Synthetic Tropsch process, the synthetic gas is distilled to get paraffinic hydrocarbons with oil content of 15% (Para 5 of SCN). In paraffin wax of 2712 the oil content is generally lower and paraffin waxes with higher oil content are generally covered as slack wax. Thus, the imported product on account of relatively higher oil content, more appropriately fits into the definition of slack wax compared to paraffin wax.*

ii. *HSN explanatory notes to CTH 3404 at para (A) clarifies the position as to classification of a product having produced synthetically through Fischer Tropsch Process. It says 'Waxes of Heading 27.12, produced synthetically or otherwise (e.g., Fischer-Tropsch waxes* <u>*consisting essentially of hydrocarbons*</u>*) are, however, excluded.'. HSN of 3404 specifically states that Fischer-Tropsch waxes will fall under 2712.*

iii. *Tariff Entry 2712 90 30 specifically covers slack wax and Tariff Entry 2712 90 40 specifically covers Paraffin wax. The product WAKSOL 9-11A in question being a proprietary blend of Waksol A and C9-11n-paraffin, which derives its essential characteristics from Waksol and on account of its higher oil content qualifies to be slack wax, and more appropriately fall under CTH 2712 90 30 by applying Rule 3(a) and 3(b) of General Rules of Interpretation. If for any reason it is not accepted as Slack wax, then it will fall under Tariff entry 2712 90 40 as Paraffin wax where there is no upper limit for oil content and thus it can go up to 70%. Beyond 70% oil content will take the product in CTH 2710.*

iv. *the supplier has filed the declaration with South African Customs where the product is classified under tariff entry "2712 90 50 7" and described as "****other slack wax****". [****Annexure F**** of the Appeal Book]*

v. *Circulars issued by the Board for testing of samples refers to Chapter 27 for Waksol 9-11 A Grade. [* <u>*Circular: 15/2019-Cus. dated 07.062019; Circular: 11/2018-Cus. dated 17-May-2018; Circular: 43/2017-Cus. dated 16-Nov-2017].[*</u>***Annexure-G*** *of the Appeal Book]*

8 While assailing findings of the department, the learned advocate pointed out that in para 45.2 of OIO, a reference has been made to Sasol website material, which was not referred in SCN, to conclude that the product in question is an end product and is a wood polish. Firstly, it was not a relied upon material in SCN. Secondly during the investigation department had not found any such usage, rather all imported products as a matter of fact had been used as an industrial raw material for manufacture of CPW. Thirdly, the reference is not of the product in question rather a different form of waksol A which is in Powder form and thus not relevant for the case. Product in question is in liquid form. Fourthly even this website says that this powder for Waksol A is used for preparing paint strippers and other coating products as a raw material. Pain strippers ensure that wood surface is not harmed and remains protected during the stripping process. Website nowhere suggests that Waksol A in Powder form will be used as a wood polish, rather it says that it is a FT micronized wax and used as input in a number of products. Paint strippers basically act as solvents (for which Waksol A powder is an input), in which paint is dissolved. Thus, this literature also does not suggest classification under CTH 3405.(See pg 28 of this synopsis)

9 On merits therefore, the learned advocate submitted that the appropriate classification is under CTH 2712 and not under 3405.

10 The learned advocate also referred to various test reports as follows:-

Test Report Date	**Testing Agency**	**Result**	**Remarks**	**Pg number of synopsis**
Test Report dated 31.08.2015 (RUD-4) (Para 4 of the OIO)	The Chemical Examiner, Grade-I, Customs House, Kandla	For Tank no. 113 "petroleum Oil more than 70%". For Tank No. 205: It was reported that as facility of oil	Inconclusive	16

		determination in petroleum wax is not available and the same may be referred to CRCL, PUSA, New Delhi		
Test Report Dated 13.10.2015 [Para 5 of the OIO] [RUD-6]	Chemical Examiner Grade-II, CRCL, New Delhi	(i) samples for the goods stored in Tank No. 205 is a clear colourless oily liquid having a characteristic of wax and having mineral <u>hydrocarbon oil content of 15%.</u> (ii) The pour point of the sample is 16 degree centigrade and flash point of 55 degree centigrade (iii) the sample under reference may be forwarded to Indian Institute of Petroleum, Dehradun.	Paraffinic Oil Content less than 70%. For other testing parameters the sample was never forwarded to Indian Institute of Petroleum, Dehradun for further testing.	17
Test Report Dated 17.11.2015 (RUD-7) (Para 5.1 of the OIO)	Chemical Examiner Grade-II, CRCL, New Delhi	For Sample taken from tank no 113, it was reported that the sample is composed of mineral **<u>hydrocarbon oil more than 70% by weight</u>**. CRCL New Delhi was unable to	For other testing parameters the sample was never forwarded to Indian Institute of Petroleum, Dehradun for further testing.	18

		answer the other queries raised by the departmen t and stated that the sample under reference may be forwarded to Indian Institute of Petroleum, Dehradun.		
Test Reports Dated 02.11.2016 [RUD, 12, 13 & 14] (para 8 of the OIO]	Joint Director, Customs House Laboratory , Kandla	the sample is a colourless oily liquid composed of paraffinic compound. It does not show any oil separation hence the sample may be considered as wax preparatio n.		19-21
Test Report Dated 09.04.2019 [RUD-15] [para 10 of the OIO]	Joint Director, Customs House Laboratory , Kandla	(i) Petroleum oil is less than 70% and Waksol 9,11does not fall under Chapter 2710. (ii) by referring to General notes to HSN for Chapter 34 it was stated that "the product obtained by the industrial treatment of Fats, Oils or waxes were covered under CTH 3405"	(i) general notes to HSN 3405 nowhere states that product obtained by the industrial treatment of Fats, Oils or waxes are to be specifically covered under 3405 (ii)As a matter of fact product is not obtained by industrial treatment of Fats, Oils or waxes rather it is Synthesised by FT process. (iii) testing authority is not a	22-23

			competent authority to determine the classification	
Test Report Dated 14.05.2019 [Para 11 of the OIO]	Joint Director, Customs House Laboratory , Kandla	(i) it was stated that the product Waksol 9-11A does not fall under CTH 2712 as the sample is having a congealing point less than 30 degree centigrade (ii) Other parameters mentioned in HSN 2712 not tested. (iii) 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. [<u>These remarks are not based on testing of the product and are text book attributes of polishes in which carriers are used and thus are irrelevant reamrks</u>]	(i) HSN explanatory notes to CTH 2712 states that petroleum jelly must have a congealing point as determined by rotating thermometer method of not less than 30 degree centigrade and the imported product is not petroleum jelly. (ii) Appellant never sought CL under Petroleum gelly category. (iii)testing authority is not a competent authority to determine the classification. (iii) without proper testing of the product the Joint Director has given his opinion on classification	24-25
Test Report	Joint Director	(i) The sample is composed of	Does not take polish when gently	26

dated 24.07.2020 for Waksol 9-11A [For other importer M/s KLJ Resources Limited]	(NFSG), CRCL, New Delhi	Paraffin wax with n paraffin. (ii) N Paraffin content (Oil) is 38.72% by Gas chromatography analysis. (iii) The sample is a mixture/preparation of paraffin wax and n Paraffin. (iv) <u>to the query of the department that "Whether the product takes a polish when gently rubbed" has specifically replied in negative</u> and stated that the imported product is in liquid form when gently rub. (V) On usage of the product it was stated that the same may ascertained at the department's end. (vi) on classification the testing results were referred.	rubbed.	

11 It was thus submitted that the whole case of the department is only based on an chemical analysis report dated 09.04.2019 and 14.05.2019 of Joint Director, Customs House Laboratory, Kandla, which has not done any proper technical testing and arbitrarily opined even on the classification, for which lab, which it is not competent to do. The Lab has opined that "Waksol 9-11A" is classified under 3405.20.

12 The learned advocate relied on the decision of Hon'ble High Court in the case of **Agro Pipes Pvt Ltd V. Union Government of India**

2021-TIOL-1350-HC-MAD-CUS has held that testing authority's not a competent authority to determine the classification and its role is limited to give indicators of chemical composition for a final determination of correct classification by the assessing officer. Thus, the report, giving classification and that too without any kind of testing or empirical data and being contrary to High Court judgement has to be ignored.

13 It was submitted that the opinion of the Joint Director, Customs House Kandla regarding classification of the imported product was vague and without conducting any testing of the imported product as polishes and thus cannot be relied upon. The Customs House Laboratory can opine only on chemical and physical properties of the product and not on the classification of product which is a legal exercise, therefore Joint Director has exceeded its jurisdiction and adjudicating authority has erred by relying on the classification part.

14 Learned advocate further submitted that the present case is purely an issue of classification/legal interpretation for which allegation of suppression and mis-declaration cannot hold good and therefore the demand is time barred beyond the normal period of limitation i.e., two years.

15 Reliance was placed on the following case laws in this regard by the learned advocate.

i. Northern Plastic Ltd. v. Commissioner [1998 (101) E.L.T. 549 (S.C.)] [Para 23]
ii. O.K. Play (India) Ltd. v. Commissioner [2005 (180) E.L.T. 300 (S.C.)] [Para 38]
iii. National Radio & Electronics Co. v. Commissioner [2000 (119) E.L.T. 746] [Para 3]

16 The learned advocate further submitted that the imported goods were not concealed in any way. Nowhere in the SCN it was alleged that goods were concealed. The goods were correctly described and were always available before the department for examination. So, the confiscation proposed under section 111(j) is not sustainable at all. Further, the goods were correctly declared in terms of description and value hence the same is not liable to confiscation under section 111(m) as proposed in the SCN and no redemption fine can be imposed.

17 That in the case of **SATRON Versus COMMISSIONER OF CUSTOMS (IMPORTS) JNCH, NHAVA SHEVA 2020 (371) E.L.T. 565 (Tri. - Mumbai) [Para 5]** the Hon'ble Tribunal has held that in absence of any evidence of misdeclaration of description or value of goods, confiscation not sustainable for mere misclassification of goods.

18 Further in the case of **SIRTHAI SUPERWARE INDIA LTD. Versus COMMR. OF CUSTOMS, NHAVA SHEVA-III 2020 (371) E.L.T. 324 (Tri. - Mumbai)[Para 4.9]** the Hon'ble Tribunal has held that the Fact that the goods correspond to declaration in respect of the description and value is sufficient to take the imported goods away from the application of Sections 111(m) and 111(o) of Customs Act, 1962.

19 Further, he submitted that it is a trite law that when goods are not available for confiscation the imposition of redemption fine is not sustainable at all. There was nothing which could be redeemed in the present case thus legally no redemption fine could be imposed. The advocate relied on the decision of Hon'ble Tribunal in **M/s Shiv Kripa Ispat Pvt. Ltd. V/s Commissioner of C. EX. & CUS. Nasik, 2009 (235) E.L.T. 623 (Tri. - LB)**.

20 He further submitted that since the products are rightly classified under CTH 2712 which attracts the same rate of duty as CTH 2710 there is no differential duty demand hence no interest liability and no penalty can be imposed under section 112(a) & (b) and section 114A, 114AA & 117 of the Customs Act. Further the goods are not liable to confiscation and the present case is a case of issue of classification which is an interpretational issue and for this reason also penalty cannot be imposed.

21 He also relied on the case of Commissioner of Customs versus **Vodafone Essar Gujarat Ltd. 2020 (373) ELT 421 [para 7]**, the Hon'ble CESTAT held that in cases of classification penalty under Section 112 cannot be imposed.

22 He submitted that in the case of the case of **Kores (India) Ltd versus Commissioner of Customs (I), Nhava Sheva 2019 (370)**

ELT 1444 [para 5.6], the Hon'ble CESTAT Division Bench held that in cases where the only dispute is with respect to classification, penal provisions of Section 112 cannot be invoked.

23 That likewise in the case of **Sirthai Superware (*Supra)* [para 4.9 & 4.10]**, the Hon'ble CESTAT Mumbai held that in cases where description of goods matches the actual content of the consignment and if the issue is with respect to classification, penalty cannot be imposed either under Section 112 or 114A of the Customs Act, 1962.

24 In view of the foregoing the Learned Advocate for the parties submitted that the appropriate classification of the product is 271290507 as other Slack wax and same should have been accepted by the authorities below.

25 Learned AR on the other hand justified the order and findings contained in the order as also the classification on the ground that the classification initially sought of Tariff Heading No. 2710 was rejected as product imported at less than 70% of weight of petroleum oil as was confirmed during testing and which report was accepted and a claim of 27010 was given up by the importers. He also referred to the findings in para 21 of the impugned order as reproduced below:-

> ***CLASSIFICATION OF WAKSOL SERIES PRODUCTS VIZ. WAKSOL 9-11A, WAKSOL 9-11B, ETC.:-***
>
> *21. As per supplier manufacturer M/s. Sasol, South Africa, Waksol 9-11A is a blend comprising of between 70 % to 80% Waksol A and at least 20% C9-C11 n-paraffins and it is liquid at 20 Deg C. Similarly, Waksol 9-11B is produced from Waksol-B. Whereas, M/s. Sasol explained the manufacturing process of Waksol A as under:-*
>
> > *"The product of Fischer Tropsch synthesis known as reactor wax, which has been separated from water and liquid (at room temperature) condensates, is distilled into a number of components in a vacuum distillation column. There are four main products of this column namely; (1) Paraffin Feed, comprising hydrocarbons <C20*

(ii) Waksol A, comprising mainly hydrocarbons C14-C28 (iii) Medium Wax, comprising mainly hydrocarbons C24C42
(iv) Hard Wax, comprising hydrocarbons >C28

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

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

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

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

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

21.3. From the above parameters of ascertaining classification of any product under Ch. 34, heading 34.05, manufacturing process of Waksol 9-11A and Waksol 9-11B, their end uses as confirmed by the representatives of M/s. PIIPL, it appeared that the products viz. Waksol 9-11A and Waksol 9-11B are classifiable under CTH 34.05. In order to confirm the classification of said. products, Technical Opinion of Custom House Laboratory, Kandla was sought vide letter dated 30.04.2019 vide which it was specifically asked to opine under which CTH, the product Waksol 9-11A was classifiable. The Joint Director, Custom House Laboratory, Kandla where the testing of representative samples was also done, opined vide their report dated 14.05.2019, that as this sample is not any of the waxes falling under Chapter 271210 to 27129090 or not of Petroleum oils and oils obtained from Bituminous Minerals, preparation containing 70% or more than of Petroleum oils from 271012 to 27109900 and at is blend/mixture of WAKSOL A, a synthetic Paraffin wax and Paraffin having Carbon number C9-C12. The Paraffin C9-C11 is a ingredient used as carrier to improve consistency of polishes in which the WAKSOL A is a principal component used to import water proof, wear resistant and other properties of polishes and thus the blend of paraffin C9-C11 and WAKSOL A to get the preparation "WAKSOL 9-11 A correctly falls under the chapter 3405.20.

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

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

22. The classification of the goods in question, at the time of filing Warehouse Bills of Entry and their corresponding ex-bond Bills of Entry & Bill of Entry for home consumption was not correct, as was required from them under Section 46(4) of the Customs Act, 1962 read with Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rules 11 & 14 of the Foreign Trade (Regulation) Rules, 1993. The facts and evidences suggest that the said importers had failed to furnish correct classification of the goods in question. The Test Reports of the goods in question and Technical Opinion of the

> *Custom House Laboratory clearly indicates that the goods, viz., Waksol-A, Waksol 9-11A and Waksol 9-11B etc. appeared to be aptly classifiable under Customs Tariff Heading 34052000 instead of CTH 27101990. It further appeared that the classification of the goods in question was done under CTH 27101990, by M/s. PIIPL with intent to evade payment of differential Customs Duties as the Duty rate under CTH 3405 was higher than that under CTH 2710. It, thus, appeared that the subject products are liable to be classified in the residual entry of the said heading at 34052000 and the classification of such products done by M/s. PIIPL under CTH 27101990 is liable to be rejected.*

26 He also emphasized that product, despite knowing all details, having been misclassified by the appellants, penalties were rightly imposed. He, therefore, emphasised that the classification under Tariff Heading 3405 and rejection of CTH 2710 was justified. In rejoinder, the Learned Advocate drew our attention to para 26.2 of order in original to emphasise that not only technical opinion of Customs House Laboratory has been taken on classification but also the opinion has been relied upon to justify classification under CTH 3405. The relevant findings are reproduced below:

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

<u>Findings:-</u>

27 We have gone through the rival submissions as well as various case law relied upon by the appellant as well as department. We find

that the appellants initially claimed goods under Tariff Heading 2710 as classification of the product in their Bills of Entry, but after being confronted with various evidence during investigation by DRI made alternate submissions for the product to be appropriately classified under Tariff Heading 2712, on the ground that the product cannot be classified under Tariff Heading 3405. We find that TH 3405, pertains to various end products and excludes waxes of heading 3404. Also the product is an Industrial Raw Material for manufacturer of another Industrial Raw Material i.e. Chlorinated Paraffin Wax and cannot be covered under Tariff Heading 3405 and that even explanatory notes to CTH 3405 (2017 edition) as well as the finding of the learned adjudicating authority, in para 45.2 point to the effect that Waksol 911-A, Waksol 911-B, is not exclusively used for Chlorination and can also be used for other purposes like Polishes, cream and similar preparations for the maintenance of wooden furniture, floors for other wooden work. The findings therefore only show the possibility and do not conclusively decide the nature of the product or its classification as the product literature and material on record shows that Waksol products are used in Chlorination and therefore do not appears in the nature of product of Tariff Heading 3045. We find that simply some alternate usage existing of the product or the possibility of their being used as such, will not make the product of the nature specified in Tariff Heading 3405 specifically when product used and specified in Tariff Heading 3405 are in the nature of end products and not in the nature of raw-materials. The department has to conclusively bring on record the predominant usage of the product with evidence to discharge burden of classification. Further, in view of the trite law, learned adjudicating authority should have given his own findings on the classification sought and not relied on one given by the Chemical analyst. To justify classification under 3405 department will need to show that the product imported was not essentially in the nature of intermediate product or raw material and was not, often 'Put up for retail sale' as is the requirement laid down in HSN explanatory notes to CTH 3405 (2017 edition referred). The argument of the appellant that classification under chapter 3404 cannot be justified as the Fisher/Tropsch Technology was used and which excluded its classification under 3404 is a mutually accepted position and needs no discussion from us.

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

29 Appeal allowed by remand.

(Pronounced in the open court on 06.04.2023)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PRACHI