

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

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 10953 of 2013- DB

(Arising out of OIO-1-3/CEX/GACL/COMMR-I/2013 dated 22/01/2013 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-VADODARA-I)

Gujarat Alkalies And Chemicals Ltd

.....Appellant

P.O. : Petrochemicals,
P.O. : Petrochemicals
Vadodara, Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-I

.....Respondent

1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat- 390007

APPEARANCE:

Shri, Dhaval K. Shah, Advocate appeared for the Appellant
Shri Ajay Kumar Samota, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L.MAHAR**

Final Order No. 11771/2023

DATE OF HEARING: 23.06.2023
DATE OF DECISION: 24.08.2023

RAMESH NAIR

The brief facts of the case are that the appellant are engaged in the manufacture and clearance of chlorinated paraffin and classified the same under Tariff Item No. 38 12 2090. The case of the department is that appellant's product is chlorinated paraffin wax and the same is correctly classifiable under 2712 20 10 and appellant are liable to pay the differential duty for the period of December-2008 to February-2009.

2. Shri Dhaval K. Shah, Learned counsel, appearing on behalf of the appellant submits that they are not manufacturing Chlorinated Paraffin Wax but they manufacture and clear Chlorinated Paraffin in liquid form. Only the Chlorinated Paraffin Wax is classifiable under Tariff Item No. 2712 20 10 and not in the liquid form. In this regard he invited our attention to the Board

Circular No. 950/01/2011-CX dated 01.08.2011 and submits that as per the said circular it was clarified that a Chlorinated Paraffin/Chloroparaffins (liquid form) classifiable under Sub Heading 3824 90 of Central Excise Tariff Act and Chlorinated Paraffin Wax (in solid form) are classifiable under Sub Heading 3404 90 of Central Excise Tariff Act after the Budget, 2010.

2.1 He submits that the Adjudicating authority interpreted Board Circular and contended that since the classification is with reference to Finance Budget, 2010 the same is applicable for the period after the date of clarification i.e. 01.08.2011 and for the past period the department's claim of classification under Tariff Item No. 2712 20 10 is correct. It is his submission that once it is clarified that the Chlorinated Paraffin in liquid form is not classifiable under Tariff Item No. 2712 20 10 the same is applicable retrospectively. Therefore, the department's contention is not correct.

2.2 He submits as regard the nature of goods that manufactured by the appellant that it is in liquid form is not under dispute, as the same was accepted by the Adjudicating Authority himself in the impugned order. Therefore, the department's claim of classification of the goods in question under Tariff Item No. 2712 20 10 is not sustainable.

3. Shri Ajay Kumar Samota, Learned superintended (AR), appearing on behalf of the revenue reiterates the finding of the impugned order.

4. On careful consideration of the submission made by the both sides and perusal of record. We find that, with reference to rival entries of classification and goods in question i.e. Chlorinated Paraffin, the board has issued classification in Circular No. 950/01/2011-CX dated 01-08-2011 which is reproduced below:

Circular No. 950/1/2011-CX

F.No.126/1/2009-CX3
 Government of India
 Ministry of Finance
 Department of Revenue
 Central Board of Excise and Customs

New Delhi dated the 01st August, 2011

To

All Chief Commissioners of Central Excise
 All Chief Commissioners of Central Excise and Customs
 All Directors Generals under CBEC

Subject: Classification of Chloroparaffins/Chlorinated Paraffins-reg.

Sir/Madam,

References were received that divergent practices were being followed by field formations regarding classification of Chlorinated Paraffins/Chloroparaffins. It was stated that against the long and existing practice of classification of the said goods under Chapter 38 of Central Excise Tariff, some field officers were classifying them under Chapter 27 during the period prior to Budget 2010.

2. The matter has been examined by the Board. The term 'Paraffins' usually denotes a group of hydrocarbons containing carbon atoms ranging from 1 to 30. As the carbon atom number increases, paraffins change from gaseous to liquid to solid forms. To illustrate, the lowest of paraffins, 'methane' which has one carbon atom, is a gas at room temperature; octane' which has eight carbon atoms is a liquid. Further, as the carbon atom number reaches 19 and till 30 they are solid with wax like characteristics.

3. Chlorinated Paraffins/ Chloroparaffins on the other hand, are chemicals obtained by chemical modification i.e. chlorination of a number of different straight chain paraffins and paraffin waxes upto a range of 40% to 70% depending on the feed stock and end use.

4. Regarding classification of Chlorinated Paraffins/Chloroparaffins (in liquid form), the HSN Explanatory Notes (B) (9) under Heading 38.24 clarifies that chloroparaffins in liquid form are covered under the heading 3824

5. Regarding classification of Chlorinated Paraffin waxes (in solid form), the HSN Explanatory Note (B)(a) to Heading 27.12 of CETH clarifies that artificial waxes obtained by the chemical modification of lignite wax or other mineral waxes are classified in Heading 34.04. In the Budget, 2010, the specific sub headings 27122010 covering Chlorinated Paraffin Waxes has been deleted from the tariff. This item is therefore, classifiable under 3404.90 of Central Excise Tariff.

6. Accordingly it is clarified that:

(a) Chlorinated Paraffins/Chloroparaffins (liquid form) are classifiable under subheading 3824 90 of Central Excise Tariff Act.

(b) Chlorinated Paraffin Waxes(in solid form) are classifiable under sub-heading 3404.90 of Central Excise Tariff Act, after the Budget, 2010..

7. Trade and field formations may be suitably informed

8. Receipt of the Circular may be acknowledged

9. . Hindi version will follow.

From the above clarifications, it can be seen that the Chlorinated Paraffin Wax (liquid form) is correctly classifiable under Sub Heading 3824 90 of Central Excise Tariff Act.

4.1 As regard the appellant's product and its nature the Adjudicating Authority has discussed in Para 26 of the impugned order which is reproduced below:

"26. Accordingly, I have taken the view of JAC, Division -IV and JDC, Division -I of this Commissionerate from where the assessee is operating their domestic sale as well as their export. I find that as per letter F. No. V/SCN/GACL/56/D-IV/09-10 dated 16/01/2013 of JAC Division IV, Commissionerate - I, Vadodara that the product - - "Chlorinated Paraffin" is manufactured by M/s. Gurunanak Chemicals, Savli on job-work basis for M/s. GACL. M/s. GACL has obtained permission for factory stuffing of goods for export as well as permission for effecting clearance on payment of duty for domestic sale from the factory premises of M/s. Gurunanak Chemicals, Savli falling under the jurisdiction of Division - I, Vadodara -I Commissionerate. I further find that as per letter F. No. IV/16-09/Tech/Inquiry/12 dated 18/01/2013 of JDC, Central Excise & Customs, Division I, Vadodara I Commissionerate addressed to JAC, Central Excise Division IV, Vadodara I wherein it is clarified that M/s. Gurunanak Chemmicals Industries, Manjusar, Savli, Vadodara is manufacturing Chlorinated Paraffin in liquid form only. It is also mentioned that the assessee has facility to manufacture chlorinated paraffin in liquid form only, and during F.Y. 2009-10, 2010-11 & 2011-12 they have manufactured only chlorinated paraffin liquid. It is further clarified by JDC, Central Excise & Customs, Div. I, Vadodara - I that the same

goods were cleared in - Drums/Barrels or Tankers only which indicate that goods manufactured and cleared during said period were of liquid nature.”

From the above categorical finding of the Adjudicating authority, there is no doubt that the goods manufactured by the appellant i.e. Chlorinated Paraffin is in liquid form. As per the above Board Circular it was clarified that Chlorinated Paraffin liquid form is correctly classifiable under 3824 90. Though the appellant have declared classification under Tariff Item No. 3812 20 90 but the goods in any case is not classifiable under Tariff Item No. 2712 20 10.

4.2 As regards the contention of the revenue, about the effect of Circular that whether it is prospective or retrospective. We find that it is a settled law that any clarification with regard to any Act will always have retrospective effect for the reason that there is no change in the law but the existing law has been interpreted and clarified, therefore, the geneses of law remained intact. Accordingly, any clarification issued shall have a retrospective effect right from the enactment of the relevant law. Therefore, we have no hesitation to hold that in the present case the clarification issued by the board has a retrospective effect and accordingly, the purposed classification of goods under Tariff Item No. 2712 20 10 in respect of Chlorinated Paraffin in liquid form does not apply.

4.3 The Adjudicating Authority has also contended that the clarification does not have retrospective effect for the reason that in the Finance Budget, 2010 the Tariff entry of 2712 20 10 was removed. In this regard, we find that even though the Tariff Entry of 2712 20 10 was removed but it was clarified that Chlorinated Paraffin in liquid form falls under 3828 90, the said goods was even prior to Finance Budget, 2010 was classifiable under 3824 90 only, the removal of entry under 2712 20 10 is not relevant for the

product Chlorinated Paraffin in liquid form. If at all there is any effect of removal of the said Tariff Entry, it will have effect of Chlorinated Paraffin Wax in solid form. Therefore, the contention of the Adjudicating Authority on this count is also misleading and not sustainable.

4.4 As regard the difference in chapter heading claimed by the appellant under 3812 90 and the Tariff Entry 3824 90 as per the Board Circular, the same will not make any adverse effect in the appellant's case, for the reason that it is the revenue's case that the goods in question is classifiable under Sub heading No. 2712 20 10, which clearly fails as per the discussion made herein above, hence, the entire proceeding of show cause notice gets vitiated and not sustainable. In this regard we take support from the following judgment:

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"8. In the light of the above, we cannot decide on a classification that has not been pleaded before us. Once the classification proposed by Revenue is found to be inappropriate, that claimed, while clearing the goods, will sustain even if it may appear to be inappropriate. We cannot also, in our appellate capacity, direct or accord the latitude for invoking Section 11A of Central Excise Act, 1944 by obliteration of the proceedings leading to the impugned order. The mandate of the law pertaining to recovery of duties not paid or short-paid will have to be followed to the letter."

The above decision of the tribunal is based on the view taken by the Hon'ble Supreme Court in the case of WARNER HINDUSTAN LIMITED – (1999) 6 SCC 762 wherein the Hon'ble Supreme Court has held as under:

"In our opinion, the tribunal was quite wrong in these circumstances in allowing the appeal of the Excise Authorities and classifying the mint tablets as items of confectionary under Heading 17.04. The correct course for the tribunal to have followed was to have dismissed the appeal of the Excise Authorities making it clear that it was open to the Excise Authorities to issue a fresh show cause notice to the appellant on the basis that the tablets were classifiable under Heading 17.04 as items of confectionary. This would have given the appellant the opportunity to place on record such material as was available to it to establish the contrary. It is impermissible for the Tribunal to consider a case that is laid for the first time in appeal because the stage for setting out the factual matrix is before authorities below."

4.5 As per our above discussion and findings we are of the considered view that the revenue could not succeed in classifying the goods i.e. Chlorinated Paraffin in liquid form under Sub heading No. 2712 20 10. Therefore, the entire case based on that, will not sustain.

5. Accordingly the impugned order is set aside appeal is allowed.

(Pronounced in the open court on 24.08.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L.MAHAR
MEMBER (TECHNICAL)