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

REGIONAL BENCH- COURT NO. 1

CUSTOMS Appeal No. 10695 of 2023-DB
(Arising out of OIO-AHM-CUSTM-000-COM-10-23-24 Dated-21.07.2023 passed by Commissioner of Customs -Ahmedabad)

COLOURTEX INDUSTRIES PRIVATE LIMITED ....Appellant
No. 91, Opposite Navin Flourine Industries, Udhana Navsari Road, Bhestan, Surat-Gujarat-395023

VERSUS

C.C.Ahmedabad ....Respondent
Custom House, Near All India Radio,
Navrangpura, Ahmedabad-380 009

WITH

1) **CUSTOMS Appeal No. 10696/2023 (SUBRAMANIAM IYER);**
2) **CUSTOMS Appeal No. 10697/2023 (VISHAD JARIWALA);**
3) **CUSTOMS Appeal No. 10698/2023 (PRAVINCHANDRA D KABUTARWALA);**
4) **CUSTOMS Appeal No. 10699/2023 (DINESH CHAUHAN);**

(Arising out of OIO-AHM-CUSTM-000-COM-10-23-24 Dated-21.07.2023 passed by Commissioner of Customs -Ahmedabad)

APPEARANCE:
Shri T. Vishwanathan, Ms. Shruti Khanna, Manish Jain, Ambresh Pandya, Advocates appeared for the Appellant
Shri Girish Nair (Authorized Representative) for the Respondent

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

Final Order No. 10508-10512 /2024

DATE OF HEARING:31.01.2024
DATE OF DECISION:28.02.2024

RAJU

These appeals has been by Colourtex Industries Private Limited and others against demand of Customs duty and change of classification by custom authorities. The appellant is a manufacturer of Colour dyes. For the production of colour dyes they were importing a product, namely "TWITCHELL 6808 DEDUSTER" by classifying the same under heading 27101990/ 38099140. The appellants were availing exemption from BCD under Serial No. 147 of Notification 050/2017-Cus dated 30.06.2017. They were also availing exemption from payment of GST under Notification 01/2017 dated 28.06.2017. DRI on the basis of information investigated the matter and issued a show cause notice alleging misclassification as well as evasion of duty.

1.1 Learned counsel waived the ground of jurisdiction of DRI to issue show cause notice. He argued that the matter can be argued solely on the merits of the case. Hence, the matter is being taken up.

2. Learned counsel pointed out that the main function of the imported goods is that of a DEDUSTER. The tariff entries relevant to the dispute are as follows:

Period	**Tariff Item**	**Description**
June 2015-2017	38099140 (Appellant's claim)	Finishing agents, dye carriers to accelerate the dyeing or fixing of dye-stuffs and other products and preparations (for example, dressings and mordants), of a kind used in the textile, paper, leather or like industries, not elsewhere specified or included"; "Of a kind used in textile or like industries"; "Textile assistants emulsifying agents".
July 2017-December 2020	27101990 (Appellant's claim)	"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 oils obtained from bituminous minerals these oils being the basic constituents of preparations; waste oils"; "Other:"; "Other"
Heading proposed in the notice	34029019 (Department's claim)	"Organic surface-active agents (other than soap), surface- active preparations, washing preparations (including auxiliary washing preparations) and cleaning preparations, whether or not containing soap other than those of heading 3401"; "Other"; "Synthetic detergent"; "Other"

The heading 38099140, which was adopted by appellant earlier attracted higher rate of duty as compared to heads 2710 1990, the heading which was adopted w.e.f. July 2017.

2.1 He pointed out that now the revenue is seeking to classify the goods under Heading 34029019 claiming it to be a "Preparation based on organic surface active agent" based on CRCL's test report dated 31.07.2020. The said test report states that the imported goods are 'a preparation based on organic surface-active (cationic in nature)'. The test report also says that the mineral oil contained in the imported goods is nil. Learned counsel pointed out that the samples were sent for testing by DRI vide letter dated 24.06.2020. As per test memo the samples were to be tested for:

> "(A) whether the product when mixed with water at a concentration of 0.5% at 20˚C and left to stand for one to two hours at the same temperature:-
>
> (i) Give a transparent or translucent liquid or stable emulsion without separation of insoluble matter and,
>
> (ii) Reduce the surface tension or water $4.5X10^{2}$ N/,(45 dyne/Cm) or less. Or
>
> (B) Whether the product possesses the properties of Surface active agent (surfactant).
>
> OR
>
> (C) Whether the product is 'wetting agent' for other chemicals.
>
> OR
>
> (D) If none of the above please confirm the identity of the sample."

He pointed out that the questions in DRI letter were specifically intended to test for classification in term of Note 3 to Chapter 34 of the Customs tariff. He pointed out that Note 3 to Chapter 34 reads as follows:

> "3. For the purposes of heading 3402, "organic surface-active agents" are products which when mixed with water at a concentration of 0.5% at 20˚C and left to stand for one hour at the same temperature:
>
> (a) give a transparent or translucent liquid or stable emulsion without separation of insoluble matter; and
>
> (b) reduce the surface tension of water 4.5 X 10-2 N/m (45 dyne/Cm) or less."

The test report received from the chemical laboratory read as follows:

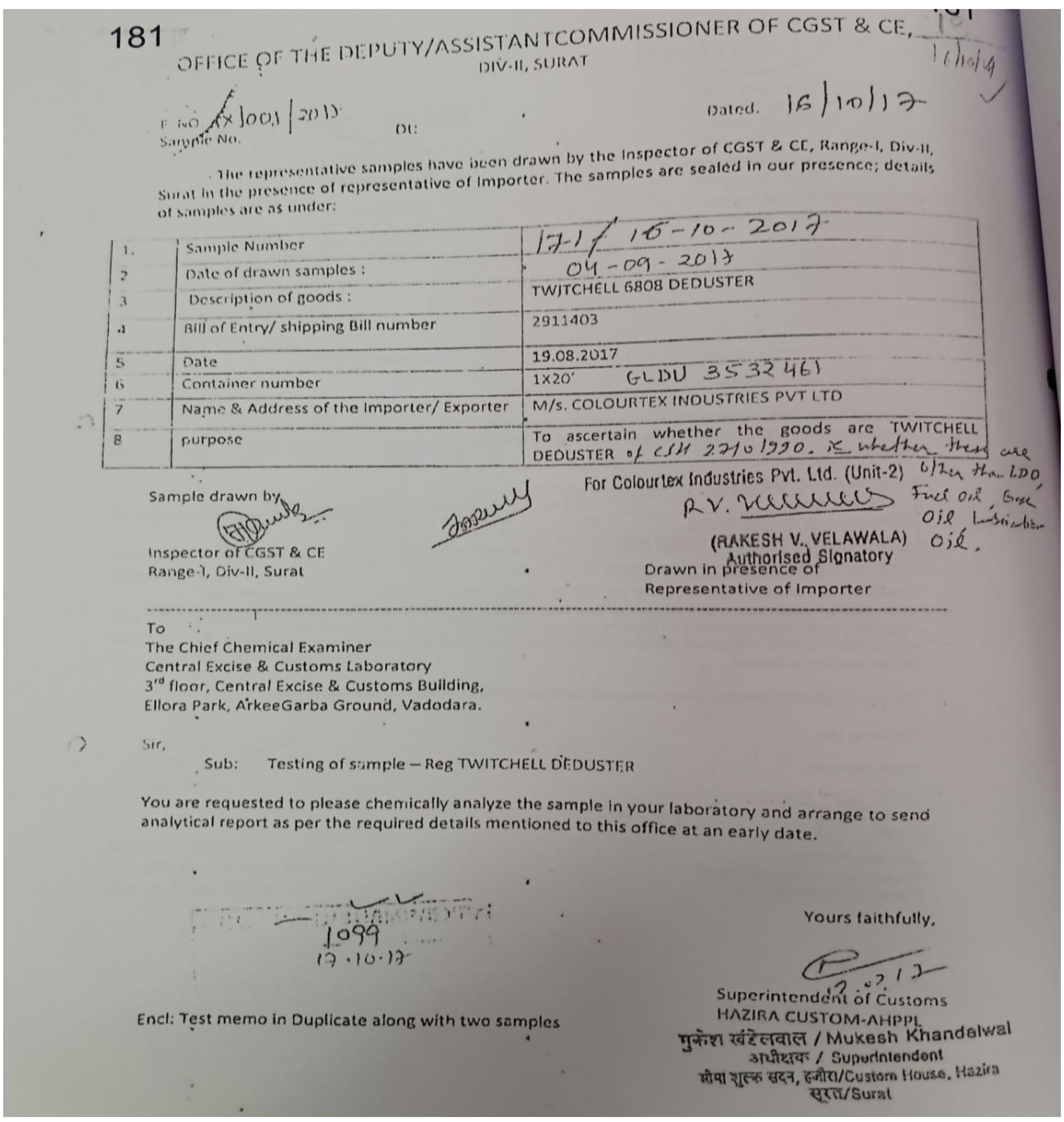
TEST REPORT

The sample is in the form of brownish liquid free from visible impurities. It is a preparation based on organic surface active agent (cationic in nature) having following properties:

(i) Test for cationic +ve
(ii) Surface tension of the sample 'when mixed with water at a concentration of 0.5% at 20°C and left to stand for one hour at same temperature gives white stable emulsion without separation of insoluble matter is 31.4 dyne/cm.
(iii) Specific gravity at 27°C = 0.87790
(iv) Ash content = 0.6% by wt.
(v) Test for mineral oil = negative
(vi) PH (1:10) = 7.5

The finding CRCL was that the product is a "preparations based on Organic Surface Active Agent (Cationic in Nature)".

2.2 Learned counsel pointed out that earlier also the material was tested two times. The communications are reproduced below: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OFFICE OF THE DEPUTY/ASSISTANTCOMMISSIONER OF CGST & CE,

DIV-II, SURAT

F. NO. X/1003/2017 Dt: Dated. 16/10/17

Sample No.

The representative samples have been drawn by the Inspector of CGST & CE, Range-I, Div-II, Surat in the presence of representative of Importer. The samples are sealed in our presence; details of samples are as under:

1.	Sample Number	171/ 16-10-2017
2	Date of drawn samples :	04-09-2017
3	Description of goods :	TWJTCHELL 6808 DEDUSTER
4	Bill of Entry/ shipping Bill number	2911403
5	Date	19.08.2017
6	Container number	1X20' GLDU 3532461
7	Name & Address of the Importer/ Exporter	M/s. COLOURTEX INDUSTRIES PVT LTD
8	purpose	To ascertain whether the goods are TWITCHELL DEDUSTER of CSH 27101990. & whether these are other than LDO, Fuel oil, Base oil, Lubricating oil.

Sample drawn by

Inspector of CGST & CE
Range-I, Div-II, Surat

For Colourtex Industries Pvt. Ltd. (Unit-2)
R.V.
(RAKESH V. VELAWALA)
Authorised Signatory
Drawn in presence of
Representative of Importer

To
The Chief Chemical Examiner
Central Excise & Customs Laboratory
3rd floor, Central Excise & Customs Building,
Ellora Park, ArkeeGarba Ground, Vadodara.

Sir,

Sub: Testing of sample – Reg TWITCHELL DEDUSTER

You are requested to please chemically analyze the sample in your laboratory and arrange to send analytical report as per the required details mentioned to this office at an early date.

1099
17.10.17

Yours faithfully,

Superintendent of Customs
HAZIRA CUSTOM-AHPPL
मुकेश खंडेलवाल / Mukesh Khandelwal
अधीक्षक / Superintendent
सीमा शुल्क सदन, हजीरा/Custom House, Hazira
सूरत/Surat

Encl: Test memo in Duplicate along with two samples

The sample sent on 16.10.2017 was to ascertain whether the goods are "TWITCHELL DEDUSTER" of custom tariff heading 2710 1990 and whether these are other than LDO, Fuel Oil, Base Oil, Lubricant Oil. The test report from the importer was as follows:

> *"The sample is in the form of brownish coloured liquid. It is mainly composed of mineral hydrocarbon oil more than 70% by wt having following constants –*
>
> *Ash Content = Nil*
>
> *Density at 150°C = 0.8698*
>
> *Exact identification/ characterfication could not ascertained. Therefore, party may be asked to provide authentic pointed literature, physio-chemical components, if required.*
>
> *Sealed remnant returned herewith."*

Another sample was sent for testing on 28.08.2018. The purpose of testing was as to whether the goods are (i) TWITCHELL 6808 DEDUSTER or otherwise (ii) Chemical composition of the goods. The test report received from laboratory was as follows:

> *"The sample is in the form of brownish coloured oily liquid. It is mainly composed of mineral hydrocarbon oil more than 70% having following constants –*
>
> *Density at 150°C = 0.8679 gm/ml*
>
> *Flash point (AMCC) = 158°C*
>
> *Kinetic viscosity atomic = 23.160 ST*
>
> *Exact identification/ characterisation could not ascertained. Sealed remnant returned herewith."*

2.3 The appellant approached their supplier and supplier vide letter dated 01.05.2020 give following clarification:

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Pulcra Chemicals

Pulcra Chemicals LLC
474 Bryant Blvd
Rock Hill, SC 29732
USA
Phone 803-325-8500
Fax 803-325-8501
Customer Service 800-634-2436
www.pulcra-chemicals.com

May 1, 2020

Re: HSN Certification of Twitchell 6808

To Whom It May Concern:

This letter certifies that Pulcra Chemicals LLC has supplied 15,660 kilograms of Twitchell 6808 Deduster to Colortex Industries Private Limited via Invoice #9000561209 dated the 5th March 2020.

The HSN code assigned to Twitchell 6808 Deduster is 2710.19.4590. This code is the true and correct HSN code for this product. Twitchell 6808 Deduster is not a surfactant and cannot be classified under HSN 38099140.

Jennifer Kirkman
Regulatory Affairs Manager
Pulcra Chemicals LLC

Subsequently vide letter dated 12.10.2020 the supplier gave following further clarification:

Pulcra Chemicals

Pulcra Chemicals LLC
474 Bryant Blvd
Rock Hill, SC 29732
USA
Phone 803-325-8500
Fax 803-325-8501
Customer Service 800-634-2436
www.pulcra-chemicals.com

October 12, 2020

To Whom It May Concern:

Twitchell 6808 Deduster is not a surface active agent. Twitchell 6808 Deduster is from the family of Hydrocarbon/Mineral oil which made of 70% to 90% Mineral Oil. The Mineral oil is an aliphatic hydrocarbon.

Components in Twitchell 6808 Deduster are as follows:

Chemical Name	CAS No.	Concentration (% w/w)
White mineral oil (petroleum)	8042-47-5	>= 70 - < 90
Sulfonic acids, petroleum, sodium salts	68608-26-4	>= 5 - < 10
Propane-1,2-diol	57-55-6	>= 1 - < 5

Twitchell 6808 Deduster comes under the HTS 2710 description, it states, *"Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included , containing by weight 70 percent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basis constituents of the preparations"*. This description fits our product's formula.

We hereby declare that the above furnished details are true to the best of our knowledge.

Thanking you,

Yours faithfully,

Jennifer Kirkman
Regulatory Affairs Manager
Pulcra Chemicals LLC

2.4 The appellant on their own approach the Bombay Test House and vide test report dated 23.10.2020 the following report was given.

CERTIFIED
ISO 9001 : 2015
ISO 14001 : 2015
ISO 45001 : 2018

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BOMBAY TEST HOUSE PVT LTD
Testing | Inspection | Certification
www.bombaytesthouse.com

Central Laboratory: Fourth Floor, Unit No. 1, Banking Complex II, Plot No 9 & 10, Sector 19-A, APMC Market 2, Vashi, Navi Mumbai 400 703. India.

Tel. : +91 22 41239185 / 27831910
Fax : +91 22 27831911
Mob. : +91 98677 91055 / 81690 66785

Email: enquiry@bombaytesthouse.com
bombaytesthouse@gmail.com
CIN : U74900TZ2011PTC017261

TEST REPORT

Date : 23 Oct 2020

No. BTH/TR/000544/1076/20-21

M/S. Colourtex Industries Pvt Ltd
Survey No. 91, Opp. Navin Flourine,
Udhna- Navsari Road,
Bhetan,Surat 395 023 Gujarat
E.mail: anil.patil@colourtex.co.in

Sample submitted by : Party

Sample Name: TWITCHELL 6808 DEDUSTER

Received by us On : 20 Oct 2020
Analysis Started On : 20 Oct 2020
Completed On : 23 Oct 2020

Lot No. 20B041
Description: Liquid
Qty: 1 Liter
Packing Details: Plastic Container

Sr.No	Parameter	Test Method	Unit	Results
	Chemical & Physical			
1	Density @ 15° C	IS:1448 (P:32)1992	gm/cc	0.8777
2	Flash point	IS:1448(Part-21)1992	Deg C	121.0
3	Kinematic Viscosity At 100 Deg.C	IS: 1448(Part-25)1976	cSt	6.65
4	Kinematic Viscosity At 40 Deg.C	IS: 1448(Part-25)1976	cSt	26.73
5	Percent Recovered below 200 deg C	IS 1448(Part 18)1975	%	0.1
6	Total Sulphur	IS:1448(Part-33)1991	%	0.4521
7	Viscosity Index	IS 1448 (P-10)2012	--	222.01
8	Distillation Range	IS : 1448(Part-18) 1991	Deg 'C'	I.B.P - 190, F.B.P - 420
9	Mineral Hydrocarbon Analysis	FTIR SPECTROSCOPY	%	C_A=Nil, C_P=1.3263, C_N=98.67

Note: C_A – Carbon Content of Aromatics.
C_P – Carbon Content of Naphthenic.
C_N – Carbon Content of Paraffinic.

<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<<< End of the test report >>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>

2.5 After receipt of this report, which was totally in contrast with CRCL report, the appellant vide their letter dated 28.01.2021 pointed out that test report dated 31.07.2020 of CRCL indicates that the product does not contain mineral oil and does not mention the actual composition of the product or what it contains. Reference was made to the supplier's safety datasheet which indicates that the product contains 70% or more of White Mineral Oil. On these grounds, the appellants sought retest of the samples. Learned counsel pointed out that the request for retest was rejected on the ground that the CBIC Circular prescribes that the retest request should come within 10 days of the original test report.

2.6 Learned counsel pointed out that a copy of test report was never provided to them before issue of show cause notice and therefore the question of seeking retest within 10 days does not arise. The test report was only shown to them at the time of recording statement. The said report was not given to them before issue of Show Cause Notice. He further pointed out that the report sought from the chemical examiner only in terms of Note 3 chapter 34 without seeking the exact composition of the product. He further pointed out that the earlier test report of same agency CRCL dated 24.10.2017 and 12.10.2018 clearly indicate that the product contain mineral oil to the extent of 70% or more and the fact that in the instant case the test report indicated that there is no mineral oil is totally contradictory. He argued that since there was total contradiction, the retest should have been allowed at the time. The test report should not be relied upon in these circumstances.

2.7 Learned counsel argued that the imported goods are correctly classified under heading 2710 1990. He argued that the said heading reads as follows:

Tariff Item		Description of goods
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
	-	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 12	--	Light oils and preparations:
2710 19	--	Other:
2710 19 90	---	Other
2710 20 00	-	Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, containing biodiesel, other than waste oils:
2710 91 00	-	Waste oil:
2710 99 00	-	Other

He argued that the test report dated 24.10.2017 and 12.10.2018 clearly indicates that the product imported by them contains mineral oil to the extent of 70% or more. Learned counsel relied on the supplier's product safety-sheet which indicate the composition as follows:

Hazardous Components

	CAS No.	Concentration
White Mineral Oil (petroleum)	8042-47-5	>=70 -< 90
Sulfonic acids, petroleum, sodium salts	68608-26-4	>=5 -< 10
Propane -1, 2 diol	57-55-6	>=1 -< 5

Components in Twitchell 6808 Deduster are as follows:

Chemical Name	CAS No.	Concentration (% w/w)
White Mineral Oil (petroleum)	8042-47-5	>=70 -< 90
Sulfonic acids, petroleum, sodium salts	68608-26-4	>=5 -< 10
Propane -1, 2 diol	57-55-6	>=1 -< 5

Both these reports confirmed that the product contains more that 70% white mineral oil (petroleum). Learned counsel argued that there is no reason why the supplier's test report cannot be relied. He pointed out that the CRCL report dated 24.10.2017 and 12.10.2018 clearly indicate that the product contain 70% or more by weight of mineral hydrocarbon oil whereas the test report relied by the Revenue indicates that it does not contain any mineral oil. He argued that the impugned order has totally disregarded the earlier test reports of same agency CRCL dated 24.10.2017 and 12.10.2018.

2.8 Learned counsel argued that the global classification supports the classification of goods adopted by the appellants. He relied on the classification issued by Ms Jeniffer Kirkman, Regulatory Affairs Manager of the Supplier, vide e-mail dated 15.12.2020 which clarifies that the goods are correctly classifiable under tariff heading 2710 19 4590. He further argued that the certificates dated 01.05.2020 and 12.10.2020 issued by supplier also clearly indicate that the goods are correctly classifiable under heading 2710.

2.9 Learned counsel argued that the credibility and correctness of the test report dated 31.07.2020 relied in the impugned notice is doubtful and conclusion drawn therein is contrary to the earlier test report given by the same authority and also by various other testing agencies. He argued that the test report dated 31.07.2020 arrives at a diametrically opposite conclusion by stating that the sample has tested negative mineral oil whereas the earlier two reports of the same authority clearly indicate that it include more than 70% of mineral oil by weight. He relied on the decision of Tribunal in the case of Shri Lakshmi Cotsyn Ltd. 2011 (263) ELT 299 (Tri Del.) wherein it has been held that where there are contrary reports at the instance of department then the one in favour of assessee should be taken into account. The said decision was also followed in the case of CCE vs Atlas Mercantile Pvt Ltd.2019 (366) ELT 911 (Tri. Mum.).

2.10 He argued that the samples were drawn without observing the IS procedures for drawing of samples. He pointed out that there is no indication if the samples were drawn prescribed by IS procedure and therefore, the entire test report becomes void.

2.11 He further pointed out that test report 31.07.2020 is self contradictory. He argued that as per test report dated 31.07.2020, the imported goods are brownish liquid which form a sterile emulsion when mixed with water. He argued that emulsion can only be two kinds oil in water and water in oil. Therefore, one of the two elements of the emulsion has to be oil. He relied on the McGraw Hill Encyclopedia of Chemistry, Second Edn. Which defines 'Emulsion' as follows:

> "A dispersion of one liquid in a second immiscible liquid. Since majority of emulsions contain water as one of the phases, it is customary to classify emulsion into two types: the oil-in-water (O/W) type consisting of droplets of oil dispersed in water and the water-in-oil (W/O) type in which the phases are reversed."

He argued that without oil contained in product, as the report suggests, there cannot be any emulsion formed with water. Learned counsel further argued that retesting of the sample ought to have been undertaken as per request of the appellant as the test report was contrary to the earlier test report of the same agencies as well as the supplier's data sheet provided to the revenue by the appellant vide letter dated 28.01.2021.

2.12 Learned counsel further argued that the copy of test report dated 31.07.2020 was never made available to the appellant before issue of show cause notice and was only shown to Mr. Subramanyam Iyer while recording his statement dated 23.09.2020 under Section 108 of the Customs Act, 1962. In fact Mr. Iyer vide email dated 07.10.2020 requested that a copy of the aforesaid test report shown during the recording of statement but no such copy was supplied by the revenue. The said test report dated 31.07.2020 was only provided to the appellant as part of the relied upon document in the Show Cause Notice which was issued on 15.12.2020 and received on 17.12.2020. For this reason, the appellant could not contest the test report of the sample of imported goods before show cause notice. He further argued that the time limited prescribed for seeking retest by an importer under Circular 30/2017-Cus dated 18.07.2017 cannot be strictly applied as after considering COVID restrictions, the Hon'ble Apex Court vide order dated 10.01.2022 extended the period of limitation provided under any general or special law in respect of all judicial or consequential proceeding till 31.05.2022. In that respect, the request made for retesting cannot be considered as delayed.

2.13 Learned counsel further argued that the imported goods cannot be classified under tariff item 3402 9019. He argued that the said heading covers preparations of organic surface active agents. Note 3 to

Chapter 34 describe the goods which can be classified as "organic surface active agents" in following terms:

> "3. For the purposes of heading 3402, "organic surface-active agents" are products which when mixed with water at a concentration of 0.5% at 20˚C and left to stand for one hour at the same temperature:
>
> (a) give a transparent or translucent liquid or stable emulsion without separation of insoluble matter; and
>
> (b) reduce the surface tension of water 4.5 X 10-2 N/m (45 dyne/Cm) or less."

The HSN explanatory notes to heading 3402 prescribes as follows:

"*(I) ORGANIC SURFACE-ACTIVE AGENTS (OTHER THAN SOAP)*

****

(II) SURFACE-ACTIVE PREPARATIONS, WASHING PREPARATIONS (INCLUDING AUXILIARY WASHING PREPARATIONS) AND CLEANING PREPARATIONS, WHETHER OR NOT CONTAINING SOAP, OTHER THAN THOSE OF HEADING 34.01

This group comprises three categories of preparations:

(A) ***Surface-active preparations.***

****

Surface-active preparations are used for their cleansing, wetting, emulsifying or dispersing properties in many industrial applications, for example as:

(i) ***Detergents for the textile industry, to eliminate fats and soiling matter on textiles during manufacture and finishing.***

(ii) ***Wetting agents, emulsifying agents, fulling assistants and brightening agents, for the textile industry.***

(iii) Soaking agents (for raw hides), de-greasing agents, wetting agents (for use in dyeing), levelling agents or toners for the leather or fur industries.

(iv) Basic materials for the manufacture of washing preparations of Part (B) below (e.g., anionic surface-active preparations which may contain, either as a residue or as a result of deliberate additions, a considerable quantity of sodium sulphate or other inorganic salts of the type arising during the manufacture of the surface active agent).

(v) Dispersing agents for the paper or synthetic rubber industries.
(vi)Flotation aids for the mining industry.
(vii)Emulsifying agents used in the preparation of pharmaceutical or cosmetic products.

****

(B) Washing preparations (including auxiliary washing preparations) and cleaning preparations, having a basis of soap or other organic surface-active agents.

This category covers washing preparations, auxiliary washing preparations and certain cleaning preparations. These various preparations generally contain ***essential*** *constituents and one or more* ***subsidiary*** *constituents. The presence of these latter constituents distinguishes, in particular, these preparations from those described in Part (A) above.*

The ***essential*** *constituents are synthetic organic surface-active agents or soaps or mixtures thereof.*

****

Washing preparations based on surface-active agents are also known as **detergents.** This type of preparation is used for washing clothes and also dishes or kitchen utensils.

****

(C) **Cleaning or de-greasing preparations, not having a basis of soap or other organic surface-active agents.**

****

This heading **does not cover:**

(c) Preparations, containing surface-active agents where the surface-active function is either not required or is only subsidiary to the main function of the preparation **(headings 34.03, 34.05, 38.08, 38.09, 38.24,** *etc., as the case may be).*

(e) Water-insoluble naphthenates, petroleum sulphonates and other water-insoluble surface-active products and preparations. They fall in **heading 38.24, provided** *they are not included in a more specific heading.*"

He argued that for goods to fall under the category of "surface active preparations", it is necessary to establish that the surface active function is necessary and not merely subsidiary to the main function to the preparation. He argued that no evidence has been produced that the preparation imported by the appellant requires surface active function as it main function. He pointed out that the DEDUSTER is sprayed over the colour dyes just to ensure that it does not fly off in the form of dust.

2.14 Learned counsel has also argued that the notice is barred by limitation. It was argued that it is a matter of classification and question of interpretation. Moreover, the samples were taken twice earlier and tested by revenue themselves. No misdeclaration of any kind has been made by the appellants.

3. Learned Authorized representative relies on the impugned order.

4. We have considered the rival submissions. We find that the product imported by the appellant is DEDUSTER. The revenue is seeking to classify the said product under sub-heading 3402 9019, the appellants seek to classify the goods under the heading 2710 1990.

4.1 During the period 01.04.2015 to 30.06.2017, the appellant had classify the goods under the heading 3809 9140. However, on realizing their mistake w.e.f. 01.07.2017, the appellant started classifying the product under the heading 2710 1990. The appellant seeking to classify the goods as preparations of mineral oil containing weight 70% or more of petroleum oil or oil obtained from Bituminus mineral. The samples were drawn on 24.10.2017 and 12.10.2018. The Deputy Commissioner of Customs vide letter dated 19.03.2020 sought to classify the goods under heading 3809 9140 again. In response to that the appellant clarified vide letter dated 30.04.2020 that correct classification based on composition and suppliers classification was 2710 and that goods were not emulsifier agent. The Bill of Entry was approved under heading 2710 1990.

4.2 In letter dated 16.10.2017 the purpose of testing was described as to whether the goods are "TWITCHELL DEDUSTER" of custom tariff heading 2710 1990 and whether these are other than LDO, Fuel Oil, Base Oil, Lubricant Oil. The test report from the importer was as follows:

> *"The sample is in the form of brownish coloured liquid. It is mainly composed of mineral hydrocarbon oil more than 70% by wt having following constants –*
>
> *Ash Content = Nil*
>
> *Density at 150°C = 0.8698*
>
> *Exact identification/ characterfication could not ascertained. Therefore, party may be asked to provide authentic pointed literature, physio-chemical components, if required.*
>
> *Sealed remnant returned herewith."*

The purpose of testing was described in letter dated 28.08.2018 as to whether the goods are (i) TWITCHELL 6808 DEDUSTER or otherwise (ii) Chemical composition of the goods. The test report received from CRCL was as follows:

"The sample is in the form of brownish coloured oily liquid. It is mainly composed of mineral hydrocarbon oil more than 70% having following constants –

Density at 150°C = 0.8679 gm/ml

Flash point (AMCC) = 158°C

Kinetic viscosity atomic = 23.160 ST

Exact identification/ characterisation could not ascertained. Sealed remnant returned herewith."

The goods were classified under heading 2710 1990 according to these test reports both these test reports clearly indicated that the sample contained more than 70% mineral hydrocarbon oil. In both these reports the examiner examined as follows:

Hazardous Components

	CAS No.	Concentration
White Mineral Oil (petroleum)	8042-47-5	>=70 -< 90
Sulfonic acids, petroleum, sodium salts	68608-26-4	>=5 -< 10
Propane -1, 2 diol	57-55-6	>=1 -< 5

Components in Twitchell 6808 Deduster are as follows:

Chemical Name	CAS No.	Concentration (% w/w)
White Mineral Oil (petroleum)	8042-47-5	>=70 -< 90
Sulfonic acids, petroleum, sodium salts	68608-26-4	>=5 -< 10
Propane -1, 2 diol	57-55-6	>=1 -< 5

4.3 Thereafter DRI stated investigation. DRI searched the premises of the appellants on 05.03.2020 and withdrew records. Thereafter on 12.03.2020 sample of imported goods was drawn under punchnama. As per test memo, the sample was to be tested for the following:

"(A) whether the product when mixed with water at a concentration of 0.5% at 20°C and left to stand for one to two hours at the same temperature:-

(i) Give a transparent or translucent liquid or stable emulsion without separation of insoluble matter and,

(ii) Reduce the surface tension or water 4.5X10² N/,(45 dyne/Cm) or less. Or

(B) Whether the product possesses the properties of Surface active agent (surfactant).

OR

(C) Whether the product is 'wetting agent' for other chemicals.

OR

(D) If none of the above please confirm the identity of the sample."

The test report received from the chemical laboratory read as follows:

TEST REPORT

The sample is in the form of brownish liquid free from visible impurities. It is a preparation based on organic surface active agent (cationic in nature) having following properties:

(i) Test for cationic +ve
(ii) Surface tension of the sample 'when mixed with water at a concentration of 0.5% at 20°C and left to stand for one hour at same temperature gives white stable emulsion without separation of insoluble matter is 31.4 dyne/cm.
(iii) Specific gravity at 27°C = 0.87790
(iv) Ash content = 0.6% by wt.
(v) Test for mineral oil = negative
(vi) PH (1:10) = 7.5

According to test report, the goods qualify as preparations of surface active productions.

4.4 A statement of Mr. Subramaniam Iyer, DGM (Procurement) was recorded under section 108 on 23.09.2020 wherein he was confronted with the test report. The appellant vide E-mail dated 23.09.2020 requested for a copy of the test report dated 31.07.2020. The appellant wrote to DRI and clarified that the imported goods contained white mineral oil in the range of 70-90% and therefore are classifiable under heading 2710. They also pointed out that the said heading has been approved by customs from time to time after subjecting the imported goods to test prior to home clearance. They also submitted a certificate dated 12.10.2020 from supplier which clarified that the goods contained 70-90% of mineral oil and that the product is not a surface active agent. Vide E-mail they also provided a copy of test report from Bombay Test House Private Limited dated 23.10.2020 as well as invoices issued by the supplier to various customers in different countries. Ignoring the request of retest, the impugned Show cause notice was issued to the appellant. The appellant along with the show cause notice received a copy of test report dated 31.07.2020 for the first time. The test report relied in the notice was found contrary to the earlier test reports. The test report relied finds no mineral oil in the sample whereas earlier test report found more than 70% mineral oil. The difference is stark. The appellant vide letter dated 28.01.2021 requested for retest of goods. Thereafter on 23.02.2021, the appellant filed their interim reply to the show cause notice and again sought retest of the sample before submitting their final reply. In the said letter, the appellant pointed the various discrepancies in the test reports. In response the office of Principal Commissioner of Customs directed them to submit final reply and stated that only after final reply is filed the request for retest may be considered if deemed fit. The appellant vide letter dated 02.03.2021 again requested for retest before the final reply is filed however the said request was rejected by Revenue by letter dated 15.03.2021, again directing the appellant to file the final defense reply first. The appellant vide letter dated 24.03.2021 filed the final defense reply again asserting that they will be filing a comprehensive reply to show cause notice after receipt of result of retesting. Thereafter the personal hearing was held on 10.05.2023 wherein the appellants reiterate the submissions made in the reply to the show cause notice. Thereafter the impugned order was issued without allowing the retest of the samples, which was denied on account of delay in making a request for retest.

4.5 Another reason why the test report indicating absence of mineral oil is incorrect is that the report states that:

> "when mixed with water at a concentration of 0.5% at 20°C and left to stand for one hour at same temperature gives white stable emulsion without separation of insoluble matter is 31.4 dyne/cm."

Learned counsel has relied on the following definition of emulsion:

> "He relied on the McGraw Hill Encyclopedia of Chemistry, Second Edn. Which defines 'Emulsion' as follows:
>
> "A dispersion of one liquid in a second immiscible liquid. Since majority of emulsions contain water as one of the phases, it is customary to classify emulsion into two types: the oil-in-water

> (O/W) type consisting of droplets of oil dispersed in water and the water-in-oil (W/O) type in which the phases are reversed."

From above definition, it is clear that to form emulsion there has to be a mix of water and oil. If there is no oil, as the report says, there cannot be any emulsion. Thus, there is obvious contradiction in the report.

4.6 It has been asserted by the appellant that the test report was not made available to the appellants before issue of Show Cause Notice. It was only shown to Shri Nair during recording of his statement. The appellant had pointed out that defects in the test report and requested retest vide their letter dated 28.01.2021. Show cause notice has been issued on 15.12.2020 and retest was sought within a reasonable period. More over at that time due to corona pandemic Hon'ble Apex Court had directed that the period of limitation would extend to 31.05.2022 in all cases. We consider this benefit should have been allowed. Moreover during this period the appellant obtained test report from Bombay test house dated 23.10.2020 which also indicated that it was predominantly mineral oil (98%). From the above, we find that there were ample reasons to doubt the test report as it was contrary to not only the earlier two test reports of CRCL but also to the test report of Bombay test house and the data sheet of supplier. A request to retest was made within a reasonable time of supply of test report during the pandemic. The appellant has relied on the decision of CESTAT in the case of Shri Lakshmi Cotsyn Ltd. 2011 (263) ELT 299 (Tri Del.) wherein it was held that in case of contradictory reports at the instance of department, the one in favour of the assessee shall be taken into account. The said decision has been followed by Tribunal in the case of Atlas Mercantile 2019 (366) ELT 911 (Tri.). In this background, we find that the test report dated 31.07.2020 cannot be relied upon. Therefore, the allegation made in the show cause notice cannot be sustained.

4.7 The goods would not fall under the heading 3402 9019 even if the test report dated 31.07.2020 is accepted to be correct. The heading 3402 under which the goods were sought to be classified read as follows:

Tariff Item	Description of Goods	Unit	Rate of duty	
			Standard	Preferential
(1)	(2)	(3)	(4)	(5)
3402	**Organic surface-active agents (other than soap), surface-active preparations, washing preperations (including auxiliary washing preparations) and cleaning preparations, whether or not containing soap, other than thos of heading 3401**			
	- **Organic surface-active agents, whether or not put up for retail sale:**			
3402 11	-- Anionic:			
3402 11 10	--- Silicon surfactant	Kg.	10%	10%
3402 11 90	--- Other	Kg.	10%	10%
3402 12 00	-- Cationic	Kg.	10%	10%
3402 13 00	-- Non-ionic	Kg.	10%	10%
3402 19 00	**-- Other**	Kg.	10%	10%
3402 20	- *Preparations put up for retail sale*			
3402 20 10	**--- Washing preparations, (including auxiliary washing preparations) and cleaning preparations, having a basis of soap or other organic surface active agents**	Kg.	10%	-
		Kg.	10%	-
3402 20 20	--- Cleaning or degreasing preparations not having a basis of soap or other organic surface active agents	Kg.	10%	-
3402 20 90	--- Other			
3402 90	-- Other:			
	--- Synthetic detergents:	Kg.	10%	-
3402 90 11	---- Washing preparations, (including auxiliary washing preparations) and cleaning preparations, having a basis of soap or other organic surface active agents	Kg.	10%	-
3402 90 12	---- Cleaning or degreasing preparations not having a basis of soap or other organic surface active agents	Kg.	10%	-
3402 90 19	**---- Other**	Kg.	10%	-
3402 90 20	--- Sulphonated or stulphated or oxidized or chlorinated castor oil; sulphonated or sulphated or oxidized or chlorinated fish oil; sulphonated or sulphated or oxidized or chlorinated sperm oil; sulphonated or sulphated or oxidized or chlorinated neats foot oil	Kg.	10%	-
3402 90 30	--- Penetrators			
	--- Wetting agents:	Kg.	10%	-
3402 90 41	--- Washing preparations, (including auxiliary washing preparations) and cleaning preparations, having a basis of soap or other organic surface active agents	Kg.	10%	-
3402 90 42	----Cleaning or degreasing preparations not having a basis of soap or other organic surface active agents	Kg.	10%	-
3402 90 49	---- Other	Kg.	10%	-
3402 90 51	--- Washing preparations (including auxiliary washing preparations) and cleaning preparations, having a basis of soap or other organic surface active agents	Kg.	10%	-
3402 90 52	---- Cleaning or degreasing preparations not having a basis of soap or other organic surface active agents	Kg.	10%	-
3402 90 59	---- Other			

	--- Other:	Kg.	10%	-
3402 90 91	---- Washing preparations, (including auxiliary washing preparations) and cleaning preparations, having a basis of soap or other organic surface active agents	Kg.	10%	-
3402 90 92	---- Cleaning or degreasing preparations not having a basis of soap or other organic surface active agents	Kg.	10%	-
3402 90 99	---- Other			

Note 3 to the Chapter 34 reads as follows:

> "3. For the purposes of heading 3402, "organic surface-active agents" are products which when mixed with water at a concentration of 0.5% at 20°C and left to stand for one hour at the same temperature:
>
> (a) give a transparent or translucent liquid or stable emulsion without separation of insoluble matter; and
>
> (b) reduce the surface tension of water 4.5 X 10-2 N/m (45 dyne/Cm) or less."

4.8 It is seen that when the sample was sent by DRI to CRCL the exact purpose of the test was to test the goods for qualification under Note 3 to Chapter 34. Note 3 describe "organic surface active agents" and what properties of material that would qualify it to be with "organic surface active agents". "Organic surface active agents", whether or not put up for retail sale, are to be classified under heading 3402 1110 to 3402 1900. The heading 3402 2010 onwards relates to preparation put up for retail sale.

4.9 The test report dated 31.07.20, exactly answer to the description of "organic surface active agent". The test memo sent to CRCL sough following from the test report:

> "(A) whether the product when mixed with water at a concentration of 0.5% at 20°C and left to stand for one to two hours at the same temperature:-
>
> (i) Give a transparent or translucent liquid or stable emulsion without separation of insoluble matter and,
>
> (ii) Reduce the surface tension or water $4.5X10^2$ N/,(45 dyne/Cm) or less. Or
>
> (B) Whether the product possesses the properties of Surface active agent (surfactant).
>
> OR
>
> (C) Whether the product is 'wetting agent' for other chemicals.
>
> OR

(D) If none of the above please confirm the identity of the sample."

The test report received from the chemical laboratory read as follows:

TEST REPORT

The sample is in the form of brownish liquid free from visible impurities. It is a preparation based on organic surface active agent (cationic in nature) having following properties:

(i) Test for cationic +ve
(ii) Surface tension of the sample 'when mixed with water at a concentration of 0.5% at 20°C and left to stand for one hour at same temperature gives white stable emulsion without separation of insoluble matter is 31.4 dyne/cm.
(iii) Specific gravity at 27°C = 0.87790
(iv) Ash content = 0.6% by wt.
(v) Test for mineral oil = negative
(vi) PH (1:10) = 7.5

The test report even if, relied answers to the definition of "Organic Surface Active Agents" and not to "preparations based on organic surface active agents" as per this report dated 31.07.2020. Therefore, the classification should have been between 3402 1110 to 3402 1990 covering "Organic Surface Active Agent". However the Revenue chose to classify the same as preparation falling under 3402 9019 which falls under the '- - -' entry "Synthetic Detergents".

4.10 It is seen that the preparation "Organic Surface Active Agents" are different from the surface active agents in the sense that they contain items other than "Organic Surface Active Agents". From the above it is seen that the test conducted by the Revenue was solely for "Organic Surface Active Agent" which are covered under heading 3402 1110 to 3402 1900, however the notice seeks to classify the goods as a preparation under Heading 3402 9019. All surface active agents whether or not put up for retail sale can only be classified only under heading 3402 1110 to 3402 1900. Organic surface active agent cannot be classified under heading other then above as all other headings are for "preparations of organic surface active agents", like washing preparations, cleaning preparations only. Therefore, the classification sought by revenue under the heading 3402 9019 is incorrect even if the test report given by chemical examiner is taken on face value.

4.11 The HSN for the Chapter heading 3402 reads as under:

34.02 –Organic surface-active agents (other than soap); surface-active preparations washing preparations (including auxiliary washing preparations) and cleaning preparations, whether or not containing soap, other than those of heading 34.01.

-Anionic organic surface-active agents, whether or not put up for retail sale:

3402.31 - - Linear alkylbenzene sulphonic acids and their salts

3402.39 - - Other

- Other organic surface-active agents, whether or not put up for retail sale:

3402.41 - - Cationic

3402.42 - - Non-ionic

3402.49 - - Other

3402.50 - Preparations put up for retail sale

3402.90 - Other

It is seen that HSN distinguishes between the "Organic Surface Active Agents" and " Surface Active Preparations". The distinction is based on explanatory note (II)(A) of Chapter Heading 3402. The explanatory notes for "surface active preparations" read as follows:

"(II) SURFACE-ACTIVE PREPARATIONS, WASHING PREPARATIONS (INCLUDING AUXILIARY WASHING PREPARATIONS) AND CLEANING PREPARATIONS, WHETHER OR NOT CONTAINING SOAP, OTHER THAN THOSE OF HEADING 34.01

This group comprises three categories of preparations:

(A) Surface-active preparations.

These include:

(1) ***Intermixtures*** *of the surface-active agents of Part (1) above (e.g.,* ***sulphoricinoleates mixed with sulphonated alkylnaphthalenes or sulphated*** *fatty alcohols).*

(2) ***Solutions or dispersions*** *of the surface-active agents of Part (1)* ***above in an organic solvent*** *(e.g., of a solution of sulphated fatty alcohol in cyclohexanol or in tetrahydronaphthalene).*

(3) ***Other mixtures based on*** *a surface-active agent of Part (1) above (e.g., surface- active preparations* ***containing a proportion of soap, such as alkylbenzenesulphonate with sodium stearate****).*

(4) ***Solutions or dispersions of*** *soap in an* ***organic solvent such as cyclohexanol.*** *(Solutions of soap in water, which may have a small quantity (generally not exceeding 5%)* ***of alcohol or glycerol added, are liquid soaps of heading 34.01)****.*

> *Surface-active preparations are used for their cleansing, wetting, emulsifying or dispersing properties in many industrial applications, for example as:*
>
> *(i) Detergents for the textile industry, to eliminate fats and soiling matter on textiles during manufacture and finishing.*
> *(ii) Wetting agents, emulsifying agents, fulling assistants and brightening agents, for the textile industry.*
> *(iii) Soaking agents (for raw hides), de-greasing agents, wetting agents (for use in dyeing), levelling agents or toners for the leather or fur industries.*
> *(iv) Basic materials for the manufacture of washing preparations of Part (B) below (e.g., anionic surface-active preparations which may contain, either as a residue or as a result of deliberate additions, a considerable quantity of sodium sulphate or other inorganic salts of the type arising during the manufacture of the surface- active agent).*
> *(v) Dispersing agents for the paper or synthetic rubber industries.*
> *(vi) Flotation aids for the mining industry.*
> *(vii) Emulsifying agents used in the preparation of pharmaceutical or cosmetic products.*
>
> *This group **does not include** organic surface-active products and preparations for washing the skin, in which the active component consists wholly or partly of synthetic organic-surface active agents (which may contain soap in any proportion), in the form of liquid or cream and put up for retail sale **(heading 34.01).”***

It is seen that surface active preparations need to contain certain other elements as solvents. The description (1) to (4) in explanatory note II(A) above clearly lays down that in order to qualify as “preparation” it should contain, in addition to “Organic Surface Active Agent”, something else like sulphoricinoleates or other items listed in the notes in the shape of intermixtures, solutions, dispersion or mixtures. The test report relied by revenue does not identify as to what is contained in the sample which makes it a ‘preparation’. The test report only tests for properties of ‘Organic Surface Active Agents’. Thus, the goods cannot be classified as ‘preparation based on Organic Surface Active Agents’ even if the test report is accepted as valid. There is no evidence of any mixture, solution or dispersion with the items listed in note A(1) to A(4) above.

5. The revenue had indicated the purpose of test solely in terms of Note 3 to Chapter 34. The test report gives following findings:

> ***“Surface tension of the sample when mixed with water at a concentration of 0.5% at 20°C and left to stand for one hour***

at same temperature gives white stable emulsion without separation of insoluble matter is 31.04/dynes/CM".

The explanatory note to Chapter heading 3402 also prescribes the exclusion from the said heading. The said Note which prescribes exclusions reads as follows:

> "This heading **does not cover**:
> (a) Shampoos or preparations for foam baths, whether or not containing soap or other surface-active agents (**Chapter 33**)
> (b) Paper, wadding, felt and nonwovens, impregnated, coated or covered with detergent **(heading 34.01**)
> **(c) Preparations, containing surface active agents where the surface-active funsiotn is either not required or is only subsidiary to the main function of the preparation (heading 34.03, 34.05, 38.08, 38.09, 38.24 etc., as the case may be).**
> (d) Abrasive preparations containing surface-active agents (scouring pastes and powders) **(heading 34.05)**.
> (e) Water-insoluble naphthenates, petroleum sulphonates and other water-insoluble surface-active products and preparations. They fall in **heading 38.24, provided** they are not included in a more specific heading."

It is clear from the above that preparations containing surface active agents where surface active function is either not required or only subsidiary to the main function of the preparation would not fall under heading 3402. The impugned order relies on the technical literature of the supplier namely M/s Pulcra Chemicals which was produced by Shri Subramanium Iyer, DGM (Procurement) and during recording of his statement dated 23.09.2020. The said literature reads as follows:

Pulcra Chemicals

Organic Intermediates

TWITCHELL® 6808
Dye Deduster

Empirical Formula	Proprietary
C.A.S. Number	Proprietary

Form	Clear amber liquid	
Flash Point, C.O.C.	157°C (315°F)	
Specific Gravity, 25°C	0.878	
Color, Gardner	9	
	Typical	**Specifications**
Moisture, %	0.5	1.0 max.
Emulsion, 10% in distilled water	-	Stable, 1 hr.
Viscosity, 100°F SUS	112	100-150
Packaging	172.4 kg (380 lbs.) net Closed head, lined, steel drums	

Applications
TWITCHELL® 6808 is particularly effective with acid dyes, chrome dyes, direct dyes, fiber reactive dyes, and other dyes containing a sulfonate group. All components of this product meet the FDA requirements of 21 CFR 175.210, 177.2800, and 177.2600.

TWITCHELL® 6808 is used to dedust dispersed polyester dyestuffs.

TWITCHELL® 6808 can also be used in other areas where dust is a problem, such as in powdered soaps, floor sweeping compounds, glues, sizing agents, cement, coal, sulfur, and carbon black.

TWITCHELL® 6808 has achieved considerable popularity as deterrents to the dusting broblems commonly encountered with many powdered dyestuffs.

The oil dedusters are generally added to the dyestuff during the grinding or blending operation, normally in amounts from 1.2% to 1.5% depending on particle size, density, and the degree of freeflow required. It is important to use as little of the oil as possible because excessive amounts can cause blending problems in subsequent remixing. It has also been reported that some dyestuff manufacturers add the TWITCHELL® 6808 earlier in the manufacturing process. In these cases, the purpose is to reduce the dusting tendency during grinding. TWITCHELL® 6808 also reduces dusting during mill handling, thereby reducing contamination of nearby fabrics or dye kettles, and improving working conditions for employees.

Insolubility of the dyestuff in the oil is a requirement for an oil to be accepted as a dedusting agent. To test solubility, add a small amount of dye to a filter paper previously treated with a dedusting agent. Any tendency for the color to "creep" is evidence of solubility.

Another test is used to check effectiveness of the dedusting agent in dyestuff solution. Some dedusting agents break out of solution and form a tarry mass with the dyestuff. To check for this problem, a 1.0% solution of dye is boiled for 15 minutes. The solution is then passed through an 80-squared cotton print cloth, stretched firmly and securely over a beaker. If properly treated for dedusting, the dye solution will leave no tarry spots on the 80-squared cloth. TWITCHELL® 6808 will not break away from the dyestuff at the boil and, because of its dispersive powers, it actually aids in dispersing the dyestuff and improves its rate of solution. This ability reduces the tendency of many dyestuffs to float during the dissolution process.

textiletechnology

TWITCHELL 6808
DYESTUFF DISPERSANT

Twitchell 6808 is used to dedust dispersed polyester dyestuffs, and is particularly effective with acid dyes, chrome dyes, direct dyes, fiber reactive dyes, and other dyes containing a sulfonate group. Twitchell 6808 can also be used in other areas where dust is a problem, such as in powdered soaps, floor sweeping compounds, glues, sizing agents, cement, coal, sulfur, and carbon black.

Twitchell 6808 will not break away from the dyestuff at the boil, and because of its dispersive powers, it actually aids in dispersing the dyestuff and improves its rate of solution. This ability reduces the tendency of many dyestuffs to float during the dissolution process.

All components of this product meet the FDA requirements of 21 CFR 175.210, 177.2600, and 177.2800

PRODUCT FEATURES

- Fewer airborne particles resulting from mixing and moving of powdered materials
- Fewer airborne particles resulting from grinding
- Reduced dusting during mill handling
- Lower concentrations of dust in workplace

TYPICAL PROPERTIES

Appearance, 25°C	Clear, amber liquid
Ionic Nature	Anionic
Gardner Color	9
Solubility, Aqueous	Soluble
Moisture	0.5%
Activity	99.5%
pH, 5% in Distilled Water	8.1
SUS Viscosity, 100° F	112
Specific Gravity, 25°C	0.88

APPLICATIONS INFORMATION

Twitchell 6808 is generally added to the dyestuff before or during the grinding or blending operations; normally in amounts from 1.2% to 1.5% depending on particle size, density, and the degree of free flow required. It is important to use as little oil as possible as excessive amounts of product can cause blending problems in subsequent remixing.

Insolubility of the dyestuff in Twitchell 6808 is a requirement for an oil to be accepted as a dedusting agent. To test solubility, add a small amount of dye to a filter paper previously treated with dedusting agent. Any tendency for the color to "creep" is evidence of solubility. Some dedusting agents break out of solution and form a tarry mass with the dyestuff. To check for this problem, a 1.0% solution of dye is boiled for 15 minutes. The solution is then passed through an 80-squared cotton cloth, stretched firmly and securely over a beaker. If prop erly treated for dedusting, the dye solution will leave no tarry spots on the 80-squared cloth.

PACKAGING, STORAGE AND HANDLING

Twitchell 6808 is packaged in closed head, lined, steel drums at a net weight of 172.4kgs. The product may congeal or straitfy if cold. Warm to 50C and mix well before using.

Additional handling information is contained in the Safety Data Sheet that is available upon request.

Pulcra Chemicals

Pulca Chemicals LLC - 474 Bryant Blvd., Rock Hill, SC 29732
Visit our website: www.pulcra-chemicals.com

All data, including the formulations and procedures discussed herein, are believed to be correct. However, this should not be accepted as a guarantee of their accuracy, and confirming tests should be run in your own plant or laboratory. No statement should be construed as a recommendation for any use which would violate any patent rights. Sales of all products are pursuant to terms and conditions included in Pulcra Chemicals LLC sales documents. Nothing contained herein shall constitute a guarantee or warranty with respect to the products described or their use. Safety information regarding these products is contained in their Material Safety Data Sheets. Users of these products are urged to study and use this information.

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From the above literature, it is apparent that the product is used for Dedusting the dispersed polyester dyestuff. It is used during the grinding or blending operations. From the above description it is clearly seen that the primary purpose of the goods is Dedusting during the process of grinding. The Commissioner has relied on the fact that the product also aids in faster dispersing the dyestuff and improves its rate of solution. It is seen that the primary purpose of the product is to do dedusting and the efficiency it provides in the dispersive powers is only secondary or incidental function. The exclusion clause to Chapter 3402 prescribes that the preparation contained in surface active agents where the surface active function is either not required or is only subsidiary to the main function of the preparation, the goods will not be covered under heading 3402. From the description provided in the literature, it is apparent that the primary purpose of the product is dedusting and the dispersive powers of the product are only subsidiary to the main function of dedusting. Thus while the goods cannot be classified as surface active preparation for the reason that the test done by the Revenue is only for surface active agents, it can also not be classified as surface active preparation for the reason that the primary function of the product is dedusting and the revenue has not established if the said function is based on the surface active properties of the goods.

6. We find that there is no mis-declaration of facts alleged by the revenue. The claim of revenue is that the appellant misclassified the goods. Revenue has not pointed out any mis-declaration in any details or description made by the appellants in their documents. The classification declared by appellants is a matter of interpretation. The appellant had declared the classification adopted by the supplier. The supplier was also clearing such goods under same classification to other countries. The facts were all revealed to the revenue. The samples were tested twice by revenue. The classification issue was also examined by the Deputy Commissioner during March 20 (19.03.20). In this background, we do not find any merit in allegation of deliberate suppression or mis-declaration. In that background, we find that the notice is also barred by limitation.

7. The impugned order is therefore, set aside and appeals are allowed.

(Pronounced in the open court on 28.02.2024)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Neha