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

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 10486 of 2024- DB

(Arising out of OIO-KND-CUSTM-000-COM-01-24-25 dated 08.04.2024 passed by Commissioner of Customs -Kandla)

Panoli Intermediates India Private Limited ....Appellant
105,Mohata Building,4,Bhikaji Cama Place
New Delhi-110066

VERSUS

Commissioner of Customs -Kandla ......Respondent
Office of the Commissioner of Customs,
Near Balaji Temple,Kandla

WITH

(i) Customs Appeal No. 10487/2024 (Kutch Chemical Industries Ltd);
(ii) Customs Appeal No. 10488/2024 (B.G. Chemicals);
(iii) Customs Appeal No. 10489/2024 (Budhiraja Polymers Ltd.);
(iv) Customs Appeal No. 10490/2024 (V.S. Polymers Pvt. Ltd.);
(v) Customs Appeal No. 10491/2024 (Agarwal Chemicals);
(vi) Customs Appeal No. 10492/2024 (Grasim Industries Ltd);
(vii) Customs Appeal No. 10493/2024 (Ajanta Chemicals Industries);
(viii) Customs Appeal No. 10494/2024 (Prayag Chemicals);
(ix) Customs Appeal No. 10495/2024 (Chloro Paraffin Industries);
(x) Customs Appeal No. 10496/2024 (Orient Micro Abrasive Limited);
(xi) Customs Appeal No. 10498/2024 (Competent Polymers Ltd);
(xii) Customs Appeal No. 10499/2024 (Shiva Exim Enterprises);
(xiii) Customs Appeal No. 10500/2024 (K.G. Industries);
(xiv) Customs Appeal No. 10501/2024 (Shivtek Industries Private Limited);
(xv) Customs Appeal No. 10502/2024 (Flowtech Chemicals Private Limited);
(xvi) Customs Appeal No. 10503/2024 (Amit Plasticizers)
(xvii) Customs Appeal No. 10504/2024 (Madam Chemicals Pvt. Ltd.);
(xviii) Customs Appeal No. 10505/2024 (Alwar Paraffin And Allied Products Pvt. Ltd.);
(xix) Customs Appeal No. 10506/2024 (IMC Ltd.);
(xx) Customs Appeal No. 10507/2024 (Shivlal Goyal);
(xxi) Customs Appeal No. 10508/2024 (K.C. Goyal);
(xxii) Customs Appeal No. 10509/2024 (Sunil Kumar Nenwal);
(xxiii) Customs Appeal No. 10510/2024(Standard Chemicals);
(xxiv) Customs Appeal No. 10511/2024 (Sapphire Industrial Products Pvt. Ltd.);
(xxv) Customs Appeal No. 10512/2024 (V.M.A. Enterprises Ltd.);
(xxvi) Customs Appeal No. 10513/2024 (R.K. Chemicals);
(xxvii) Customs Appeal No. 10514/2024 (Haryana Chemicals);
(xxviii) Customs Appeal No. 10515/2024 (Swastik Plasticizer and PVC Pipes Indore Pvt. Ltd.);
(xxix) Customs Appeal No. 10516/2024 (Shanti Chemicals);
(xxx) Customs Appeal No. 10517/2024 (Himchem Enterprises);
(xxxi) Customs Appeal No. 10518/2024 (Gangotri Chlorochem Ltd.);
(xxxii) Customs Appeal No. 10519/2024 (Balaji Plasticizers And Chemicals);

(xxxiii) Customs Appeal No. 10531/2024 (Shivtek Industries Private Limited);
(xxxiv) Customs Appeal No. 10532/2024 (Shiv Kumar Nenwani);

(Arising out of OIO-KND-CUSTM-000-COM-01-24-25 dated 08.04.2024 passed by Commissioner of Customs -Kandla)

(Arising out of OIO-AHM-CUSTM-000-PR-COMMR-33-2024-25dated 19.07.2024 passed by Principal Commissioner of Customs -Ahmedabad)

APPEARANCE:
Shri Pramod Kumar Rai, Shri Jayant Kumar, Shri Y.S. Reddy, Advocates for the Appellant
Shri Girish Nair & Shri Sanjay Kumar, Authorised Representative for the Respondent

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

FINAL ORDER NO. 12426-12460/2024

DATE OF HEARING: 17.09.2024
DATE OF DECISION: 22.10.2024

RAJU

These appeals have been filed by M/s Panoli Intermediates India Private Limited and others. All these appeals involve the issue of classification of products namely, Waksol A, Waksol B, Waksol 9-11A, Waksol 9-11B, etc. while importers have sought to classify these products under heading 2710 of the Schedule to the Customs Tariff Act. The Revenue is seeking to classify the same under heading 3405 of the schedule to the Custom Tariff Act. Previously the matter had reached Tribunal and the case was remanded vide CESTAT Final Order No. 10806-10831/2023 dated 06.04.2023 with following observations:

"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."

In terms of the remand order, the matter has been adjudicated vide impugned order No. KND-CUSTM-000-COM-01-2024-25 dated 08.04.2024. Aggrieved by the said order, the appellants are before Tribunal.

1.1 Notice was also issued to Shri Shivlal Goel and Shri K.K. Goel, Directors of M/s PIIPL for imposition of penalty under provisions of Section 112(a), Section 112(b), Section 114AA and Section 117 of the Customs Act, 1962. Notice was also issued to M/s Rishi Kiran, RoadlinesGandhidham and M/s Rishi Kiran Logistics Private Limited, Gandhidham for imposition of penalty under Section 112(a), Section 112(b), Section 114AA and Section 117 of the Customs Act, 1962. Notice was also issued to M/s IMC Limited, Kandla the custodian of the Public Warehouse for imposition of penalty under Section 112(a) and Section 112(b) of the Customs Act, 1962. Notice was also issued to M/s Sasol, South Africa, the supplier of goods for imposition of penalty under Section 112(a), Section 112(b), Section 114AA and Section 117 of the Customs Act, 1962. The charges made in the original show cause notice were modified by an addendum. In the addendum following proposals were made against PIIPL: (1) The proposal was made to change the classification of the goods warehoused as well as cleared by Ex-bonded bill of entry from heading 2710 1990 to 3405 2000. (2) Demand of differential duty was raised along with interest. (3) The proposal for confiscation and imposition of redemption fine was made. A proposal for imposing penalty under Section Section 112(a), Section 112(b), Section 114A, Section 114AA and Section 117 of the Customs Act, 1962.

1.2 Other noticees who had cleared the goods from the bond similar proposals like that against PIIPL was made. Out of othernoticees listed in the impugned order following have also filed appeal. List of appellants:

1	Agarwal Chemicals	C/10491/2024
2	Ajanta Chemicals Ltd.	C/10493/2024
3	Alwar Paraffin and Allied Products Pvt. Ltd.	C/10505/2024
4	Amit Plasticizers	C/10503/2024
5	B.G. Chemicals	C/10488/2024
6	Balaji Palsticizers and Chemicals Pvt. Ltd.	C/10519/2024
7	Budhiraja Polymers Ltd.	C/10489/2024
8	Chloro Paraffin Industries	C/10495/2024
9	Comepetent Polymers Ltd.	C/10498/2024
10	Flowtech Chemicals Private Limited	C/10502/2024
11	Gangotri Chlorochem Ltd.	C/10518/2024
12	Grasim Industries Ltd.	C/10492/2024
13	Haryana Chemicals	C/10514/2024
14	Himchem Enterprises	C/10517/2024
15	Kutch Chemical Industries Ltd.	C/10487/2024
16	K.G. Industries	C/10500/2024
17	Madan Chemicals Pvt. Ltd.	C/10504/2024
18	Orient Micro Abrasive Limited	C/10496/2024
19	Prayag Chemcials	C/10494/2024
20	R.K. Chemicals	C/10513/2024
21	Sapphire Industrial Products Pvt Ltd.	C/10511/2024
22	Shanti Chemicals	C/10516/2024
23	Shiva Exim Enterprises	C/10499/2024
24	Shivtek Industries Pvt. Ltd.	C/10501/2024
25	Standard Chemicals	C/10510/2024
26	Sunil Kumar Nenwal	C/10509/2024
27	Swastik Plasticizer and PVC Pipes Indore Pvt Ltd.	C/10515/2024
28	VMA Enterprises Ltd.	C/10512/2024
29	V.S. Polymers Ltd.	C/10490/2024

1.3 Appeals are also filed by Shivtek Industries Private Limited and its director Shiv Kumar Nenwani. Earlier their matters were also heard by Tribunal and the matters were remanded for fresh adjudication on the lines of the remand order in the case of M/s Panoli Intermediates India Private Limited. It is seen that the order in the case of Shivtek Industries Private Limited and its director Shiv Kumar Nenwani is on identical grounds to that of Panoli Intermediates India Private Limited and its directors, therefore, all above matters are being examined together.

2. Learned counsel for the appellants pointed out that the issue involved in the instant case is regarding classification of Waksol A, Waksol B, Waksol 9-11A, Waksol 9-11B, etc. imported by Ms/ PIIPL and cleared by various other noticees. The appellant had imported aforementioned goods and warehoused the same which was cleared by other noticees from the bond on payment of duty under Customs Tariff Heading 27101990.

2.1 Learned Counsel argued that in para 27 and 28 of the CESTAT remand order dated 06.04.2023 following observations / directions have been given to the department:

i. The products cannot be classified under CTH 3404 being a product of Fischer Tropsch Process and is a mutually accepted position as no party has sought classification under CTH 3404.
ii. CESTAT noted that CTH 3405 pertains to various end products and not for the industrial raw material used for manufacture of another product.
iii. If the product is an industrial raw material for manufacture of another industrial raw material i.e. chlorinated paraffin wax, it cannot be covered under CTH 3405.
iv. CESTAT noted that simply some alternate usage existing of the product or the possibility of there being used as such will not make the product of the nature specified in CTH 3405, specifically when product of CTH 3405 is in the nature of end products and not in the nature of raw material.
v. The department has to conclusively bring on record the predominant usage of product to discharge the burden of classification. To justify classification under CTH 3405 the department need to show that product is essentially not in the nature of intermediate product and was often put up for retail sale.
vi. The decisive usage required to be established by the department has to be predominant and common usage, and not merely based on possibility as laid down in CCE v. Hico Products Pvt. Ltd. 1996 87 ELT 584.
vii. CESTAT remanded the appeal to determine the exact nature and usage of the product imported.

2.2 Ld Counsel also pointed out that

a. The order of the Tribunal with above directions has been accepted by department as noted in para 36.2 of OIO.
b. The Adjudicating Authority has changed the admitted position noted in CESTAT order that none of the products fall under 3404, and has classified some of the products under CTH 3404. He pointed out that it goes beyond the scope of SCN, as the SCN did not propose classification under CTH 3404. He pointed out that it also goes beyond the scope of remand order.
c. The direction of the Tribunal has been framed correctly in para 42 of OIO, yet none of the directions of Tribunal has been adhered to and the OIO has been passed in utter disregard to observations / directions of the Tribunal. In para 50 & 51, adjudicating Authority going beyond the scope of remand has concluded that even if product in question isan intermediate / raw material for manufacture of other products and not fit for retail sale, it is irrelevant to decide its classification under CTH 3405.
d. Adjudicating Authority has accepted that predominant use of the product is industrial raw material in the manufacture of chlorinated paraffin wax, yet discarding the directions of the Tribunal, in violation of judicial discipline, he has classified some of the products under CTH 3405 and some of the products under CTH 3404.

2.3 Learned counsel argued that in Petro-chemical industry, the hydrocarbons obtained from earth are processed to get useful products in more than one way.

a. The first separation is based on state of the material i.e. gas, liquid or solid and this separation occurs naturally where lower molecular weight hydrocarbons existing in gaseous form such as natural gas, liquids and solids are harvested separately.
b. Through a process of distillation/fractional distillation, liquid range hydrocarbons are split into various molecular ranges. Thus, products of this route naturally existed in earth and they are just separated.
c. Large hydrocarbons Products of higher molecular weight through cracking reactions are broken into smaller, more useful hydrocarbons.

d. Similarly in synthesis reaction such as Fisher Tropsch, smaller hydrocarbons Products are combined into bigger hydrocarbons.

2.4 Learned counsel argued that the imported Waksol series products namely Waksol A, WaksolB, Waksol9-11A etc. is manufactured from natural gas, a hydrocarbon coming from earth, by a synthetic well-known process namely "**Fisher Tropsch process**".

2.5 Learned counsel argued that the manufacturer's product data sheet has been discussed in Para 19 of SCNwhich shows that entire range of Waksol series products are nothing but mixtures of various paraffins of different molecular weight containing carbon chains above C18 (wax) as well as below C18 (oil) range. The oil content for Waksol A is 14% and for Waksol B, it is 9%. The oil content in other Waksol series products like Waksol 9-11A and Waksol 9-11B is bound to be more as they are produced by blending C9-11 (complete non-waxy oil range) with Waksol A and Waksol B respectively. These facts are reflected in Para 15 of current OIO as well as para 15 of previous round OIO, which is extracted in para 1 of remand order as well.

2.6 Learned counsel took us through the details of TEST reports referred in this case which are summarized below:

Test Report Date	**Testing Agency**	**Result**	**Remarks**
Test Report dated 31.08.2015 (Para 4 of the OIO)	The Chemical Examiner, Grade-I, Customs House, Kandla	For Tank No. 205: It was reported that as facility of oil determination in petroleum wax is not available and the same may be referred to CRCL, PUSA, New Delhi	Inconclusive
Test Report Dated 13.10.2015 [Para 5 of the OIO]	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.
Test Reports Dated 02.11.2016 (para 9 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 preparation.	Confirms it as an oily liquid which is mixture of various paraffins
Test Report Dated 09.04.2019	Joint Director, Customs	(i) Petroleum oil is less than 70% and Waksol 9,11does not fall under Chapter 2710.	(i) general notes to HSN 3405 nowhere states that product

[para 10 of the OIO]	House Laboratory, Kandla	(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"	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 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 9-11Adoes 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 an 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.	(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. Appellant never claimed classification as "petroleum jelly". Comments with respect to Petroleum jelly are irrelevant for classification under 27129030 (Slack wax)/27129040 (Paraffin wax) (iii)testing authority is not a competent authority to determine the classification. (iii) Without any kind of testing of the product, the Joint Director has given his opinion Paraffin C9-C11 being a carrier and on classification.
Test Report dated 24.07.2020 for Waksol 9-11A in the case of KLJ and relied by appellant. (referred in the table in para 10 of CESTAT remand order)	Joint Director (NFSG), CRCL, New Delhi	(i) The sample is composed of 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</u>	- It is a mixture of wax and oil with oil content of 38.72%. - Does not take polish when gently rubbed.

		gently rubbed" has specifically replied in negative and stated that the imported product is in liquid form.	

2.7 Learned counsel argued that based on the various test reports, manufacturing process as well as product literature referred in SCN, it can be concluded as below:

a. The Waksol series products are colorless oilyliquid at room temperature. They are composed of 'N-Paraffin below C18 (Oil) and 'N-Paraffin above C18 (wax). Thus they are mixture of paraffin oil and paraffin wax and spread over 'below C18' as well as 'above C18', where oil content varies from 9% to 38.72%. [Though what is oil and what is wax is not defined in statute, test reports treat 'N-Paraffin below C18 as (Oil) and N-Paraffin above C18 as (wax).]

b: CRCL has confirmed that the product does not take a polish when gently rubbed and even though it is a blend of wax and oil, it does not take a waxy character.

2.8 Learned counsel argued that from the scheme of CTH 2710 and CTH 2712, it appears that a mixture of paraffin oil and paraffin wax is consideredclassifiable under CTH 2710 in case oil content is more than 70%, else it is considered as wax falling under CTH 2712. CTH 2710 covers all type of paraffin oils irrespective of their wax content as long as oil content is above 70% i.e. wax content is below 30%. CTH 2712 specifically covers all type of paraffin waxes irrespective of their oil content (Oil content 0% to 70%). CTH 2712 of the Customs Tariff Act, 1975 is reproduced below along with contentions of Ld Counsel:

Tariff Item	Description of article	Remark by 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**	
2712 10	- Petroleum jelly :	Not claimed by appellant
2712 10 10	--- Crude	
2712 10 90	--- Other	
2712 20 00	- Paraffin wax containing by weight less than 0.75% of oil	Products without any oil content will fall here
2712 90	**- Other :**	
2712 90 10	--- Micro-crystalline petroleum wax	
2712 90 20	--- Lignite wax	

2712 90 30	**--- Slack wax**	**Claimed by appellant**. In trade slack wax has relatively higher oil content than paraffin wax. However, no benchmark oil content is provided to qualify as slack wax. The supplier in south Africa before customs has declared the product as "other slack wax" (P**g.373 of appeal book**), because of higher oil content and that is why appellant claims it under **27129030** and if it is not accepted then in any case as a Paraffin wax containing by weight 0.75% or more of oil under **27129040**.
2712 90 40	**--- Paraffin wax containing by weight 0.75% or more of oil**	
2712 90 90	--- Other	

2.9 Learned Counsel took us through the HSN explanatory notes to CTH 2712 and arguments of Learned counsel which read as under.

HSN notes	***Remark by appellant***
***(A) Petroleum jelly**.* …………………………………….	
(B) Paraffin wax, microcrystalline petroleum wax, slack wax, ozokerite, lignite wax, peat wax, other mineral waxes, and <u>similar products obtained by synthesis or by other processes,</u> whether or not coloured.	First part covers waxes obtained from natural route and <u>second part</u> covers waxes obtained by synthesis or by other processes, which are similar to waxes obtained through natural route.
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*	***Describes natural process for obtaining different type of waxes of this heading.***

lubricating oils. They are less refined and have a higher oil content than paraffin wax. Their colour varies from white to light brown.	
<u>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)</u>. However, the heading does not include high polymer waxes such as polyethylene wax. These fall in heading 34.04	***Thus, waxes obtained through synthetic route which are similar to waxes of natural route are specifically covered under CTH 2712.*** ***Thus, to get covered as 'slack wax' or 'paraffin wax' product need not be manufactured through natural route.***
All these waxes are covered by the heading whether crude or refined, mixed together or coloured. They are <u>used for making candles (especially paraffin wax), polishes, etc</u>., for insulating, dressing textiles, impregnating matches, protection against rust, etc.	***The use of the product in making candle or polish will not take them out of CTH 2712.***

2.10 Learned Counsel argued that the product in question undoubtedly falls under CTH 2712in view of specific entry in CTH 2712 read with HSN notes with respect to waxes obtained from synthetic route, the oil content reported in various test reports, manufacturing process as well as product literature referred in SCN,which establishes the identity and composition of product.

2.11 The Waksol series products are admittedly an industrial raw material used in the manufacture of another industrial raw material namely chlorinated paraffin wax, which acts as a plasticizer for manufacturing various end products.The product in question has been sold to manufacturers and certificates along with representative invoices were submitted before the adjudicating authority during remand proceedings. SION notified by central government under FTP also lists C10-C30 paraffins as a raw material for manufacture of Chlorinated Paraffin Wax.

2.12 Learned counsel argued thatthe product in question does not have even remote similarity with products of Tariff entry 34052000 which covers <u>"Polishes, creams and similar preparations for the maintenance of wooden furniture, floors or other wood work"</u> under which classification has been confirmed by adjudicating authority. It should also be noted that Tariff entry 34052000 does not cover **<u>"raw</u>**

material for Polishes, creams etc.", whereas CTH 2712 specifically covers "raw material for Polishes, creams etc.".In fact, CTH 3405, does not include the word "wax" anywhere in the description. As clarified in HSN, CTH 3405 covers end products, often put up for retail sale and thus cannot include products like Waksol 911A at all.

2.13 Learned counsel argued thatCTH 3404 was never proposed in SCN, but it is to put on record that artificial waxes and prepared waxes are included in CTH 3404.By virtue of note 5 of Chapter 34 as well as HSN notes, synthetically produced waxes of heading 27.12, (e.g., Fischer-Tropsch waxes consisting essentially of hydrocarbons.) are specifically excluded.

> *Chapter Note 5. In heading 3404, subject to the exclusions provided below, the expression "artificial waxes and prepared waxes" applies only to:*
> *(a) chemically produced organic products of a waxy character, whether or not water-soluble;*
> *(b) products obtained by mixing different waxes;*
> *(c) products of a waxy character with a basis of one or more waxes and containing fats, resins, mineral substances or other materials,*
>
> *the heading does not apply to:*
> *(i) products of headings 1516, 3402 or 3823, even if having a waxy character;*
> *(ii) unmixed animal waxes or unmixed vegetable waxes, whether or not refined or coloured, of heading 1521;*
> ***(iii) mineral waxes and similar products of heading 2712whether or not intermixed or****merely coloured; or*
> *(iv) waxes mixed with, dispersed in or dissolved in a liquid medium (headings 3405, 3809, etc.).*

Learned counsel relied on HSN explanatory notes to CTH 3404 which 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) …………………………..*

2.14 Learned counsel argued thatthe Tribunal in its remand order has observed that the products cannot be classified under CTH 3404 being a product of Fischer Tropsch Process and is a mutually accepted position as no party has sought classification under CTH 3404. Further, CTH 3404 was not even proposed in the SCN therefore, classification under CTH 3404 is ruled out. Reliance was placed upon the following case laws:

a. CC, Mumbai v. Toyo Engineering India Ltd., 2006 (201) E.L.T. 513 (S.C.)
b. Ajanta Manufacturing Ltd. v. Commissioner of Customs, Kandla, 2019 (369) ELT 1067 (Tri. - Ahmd.)

2.15 Learned counsel argued that classification cannot be confirmed by citing stray online material. He relied on the decision in the case of Hewlett Packard India Sales (P.) Ltd. v. Commissioner 2023 (383) E.L.T. 241 (S.C.) (Para 14)

> *14. At the outset, we must note that the adjudicating authorities while coming to their respective conclusions, especially the Commissioner of Customs (Appeals) have extensively referred to online sources such as Wikipedia to support their conclusion. While we expressly acknowledge the utility of these platforms which provide free access to knowledge across the globe, but we must also sound a note of caution against using such sources for legal dispute resolution. We say so for the reason that these sources, despite being a treasure trove of knowledge, are based on a crowd-sourced and user-generated editing model that is not completely dependable in terms of academic veracity and can promote misleading information as has been noted by this court on previous occasions also [Commissioner of Customs, Bangalore v. Acer India (P) Ltd. - (2008) 1 SCC 382, para 17 = 2007 (218) E.L.T. 17 (S.C.) = 2007 taxmann.com 219]. The courts and adjudicating authorities should rather make an endeavour to persuade the Counsels to place reliance on more reliable and authentic sources.*

2.16 Ld counsel argued thatextended period of limitation cannot be invoked, goods cannot be confiscated and penalty cannot be imposed. He relied on the following case laws:

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**]
iv. Satron Versus Commissioner of Customs (Imports) JNCH, Nhava Sheva 2020 (371) E.L.T. 565 (Tri. - Mumbai) [**Para 5**]
v. SirthaiSuperware India Ltd. Versus Commr. Of Customs, Nhava Sheva-III 2020 (371) E.L.T. 324 (Tri. - Mumbai) [Para 4.9] [**para 4.9 & 4.10**]

2.17 Learned counsel argued thatgoods are not available for confiscation, hence no redemption fine can be imposed. He relied on the decision in the case of M/s Shiv Kripa Ispat Pvt. Ltd. V/s Commissioner of C. EX. & CUS. Nasik, 2009 (235) E.L.T. 623 (Tri. - LB).

2.18 Learned counsel argued that since the products are rightly classified under CTH 2712 and the charge of classification under CTH

3405 cannot be upheld, 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 an <u>all-industry issue of classification</u> which is an interpretational issue and for this reason also penalty cannot be imposed.

3. Learned Authorized representative relies on the impugned order. Learned authorized representative took us through detailed discussion and findings in the impugned orders.

4. We have gone through rival submissions. The issue that needs to be decided in the instant case is classification of the products imported by the appellant. All other issues regarding penalty, confiscation, demand of duty etc depend on the classification of the goods. Tribunal earlier had heard this matter and had remanded with following directions:

> "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. <u>**The department has to conclusively bring on record the predominant usage of the product with evidence to discharge burden of classification.**</u> 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. <u>**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**</u> 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."

The said order of Tribunal has not been challenged by revenue or the appellant. Therefore the following issues stand finalized

i) **The department has to conclusively bring on record the predominant usage of the product with evidence to discharge burden of classification.**

ii) **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**

iii) **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.**

The impugned order records that the imported products contains less than 70% by weight of Petroleum oils or of oils obtained from bituminous material and therefore, the same cannot be classifiable under heading 2710 as originally claimed by the appellant in the import documents. It is seen that the appellant had claimed that the correct classification of the product is neither 2710 as claimed by them in the import documents nor 3405 as claimed by the Revenue in the show cause notice. The claim of the appellant is that correct classification of the product is 2712. It is seen that in the remand order a direction was given to the adjudicating authority to examine the claim of the appellant that the goods are liable to be classifiable under heading 2712 or heading 3405.

4.1 The heading 2712 of the Custom Tariff and the heading 3405 of the Custom Tariff reads as under:

Tariff Item	Description of article

2712	**Petroleum jelly, paraffin wax, microcrystalline petroleum wax, slack wax, ozokerite, liginite 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

Tariff Item	Description of article
3405	**Polishes and creams, for footwear, pastes and powders and similar preparations (wether or not in the form of paper, wadding, felt, nonwovens, cellular plastics or cellular rubber, impregnated, coated or covered with such preparations, excluding waxes of heading 3404**
2712 10	- Polishes creams and similar preparations for footwear of leather
3405 10 10	--- Polishes creams and similar preparations for the maintenance of wooden furniture, floors or othe wood work
3405 20 00	--- Polishes creams and similar preparations for footwear of leather
3405 30 00	--- Polishes creams and similar preparations for coach work, other than metal polishes
3405 40 00	- Scouring pastes and powders and other scouring preparations
3405 90	- Other:
3405 90 10	--- Polishes and compositions for application to metal including diamond polishing powder or paste
3405 90 90	--- Other

The heading 2710 is not in contention anymore as the appellants also agree that the goods do not fall in that heading.

4.2 The revenue obtained the manufacturing process of these products obtained from M/s Sasol, South Africa. The manufacturing process of WAKSOL A was described as under:

> *"Natural Gas is reformed into synthesis gas (syngas) which is in turn fed to Fischer Tropsch (FT) synthesis reactors. The manufacturing plant runs a low- temperature FT process using an Iron catalyst which converts the syngas into hydrocarbons and water. A primary separation process separates the synthesis products into*
>
> *(1) water*
> *(2) condensates (mainly hydrocarbons C3-C20)*

(3) reactor wax (mainly hydrocarbons > C20)
(4) tail gas (syngas and C1-C3 hydrocarbons)

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

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

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

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

The literature of product Waksol 9-11A provided by the supplier manufacturer indicated that it is produced by blending Waksol A and C9-C11 Paraffins in proprietary ratio. However as per appellant correct manufacturing process is reflected in para 21 of impugned order.

5.1 The goods imported by M/s PIIPL were stored in two tanks i.e. tank No. IMC 205 and IMC 113. Samples were drawn from these two storage tanks. At the material time the tank No. IMC 205 contained 709.556 MT of Waksol 9-11A and tank No. IMC 113 contained a co-mingled of N-paraffin 616.037 MT and Waksol C9-11–12.097MT. The sample were forwarded to Joint Director, Custom House Laboratory, Kandla supplied test memo No. 57/2015-16 and 58/2015-16 in respect of Tank No. 205 and 113 respectively. The following 22 parameters were sought to be tested.

01 Melting Point (cooling curve) "C
02 Ash % max
03 Pour Point
04 Viscosity
05 Density@ 20°C
06 Flash Point @101.3 kPa(oc)
07 Water solubility @ 20°C
08 Wax content, % mass
09 Whether wax has been dispersed in liquid or otherwise
10 Acidity
11 Organic (mg KOH/g), max.
12 Inorganic (mg KOH/g), max.
13 Saponification value, max
14 Oil content, % mass
15 Congealing point
16 Whether product is mixture of n-Alkane (C9-C11) and paraffin wax or otherwise, please specify the percentage separately?
17 Whether subject product can be dispersed in liquid or otherwise
18 Whether product is chemically modified or artificial wax otherwise?

19 Whether the product is petroleum oils/oils obtained from bituminous mineral
20 Whether the product contain by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals
21 Whether these oils are basis constituents of the preparations, containing bio diesel, other than waste oil
22 Chemical Composition & properties of the product (in percentage)
23 Usage
24 Any other remarks/suggestion regarding product's nature/ composition etc.

The said parameters for testing were identifiedfor the following reason in the test memo:

> *"3. Since the above <u>parameters are vital for further investigation and issuing alert notice on Modus Operandi</u> on all India basis for the same product being imported at different ports. As it is well known facts that DRI has Pan India jurisdiction and cases booked by DRI have always all India ramification. Therefore, it is requested to submit the observation/comments as per the proforma tabulated hereinabove. Also ensure that in situation of unable to ascertain any parameters, please specify the same with reasons for inability"*

5.2 In respect of test memo No. 57/2015-16 gave the following report:

RUD-4

13 AUG 2015

Tank No. 205

Report - The sample is in the form of colourless liquid, having following constituents:

Sr. No.	Query asked	Result
1.	Melting Point (cooling curve) °C	Slip point = 19° C
2.	Ash%, max.	NIL
3.	Pour Point	Passes the test ambient temp
4.	Viscosity	3.0 CST (at 40°C)
5.	Density@ 20 °C	0.7771 g/ml
6.	Flash Point @101.3 kPa (oc)	67° C
7.	Water solubility @ 20 °C	Immiscible in water
8.	Wax content, % mass	Could not be ascertain *
9.	Oil content, % mass	Could not be ascertain *
10.	Acidity a) Organic (mg KOH/g), max. b) Inorganic (mg KOH/g), max.	NIL NIL
11.	Saponification value, max.	NIL
12.	Congealing point	21° C
13.	Whether product is mixture of n-Alkane(C9-11) and paraffin wax or otherwise, please specify the percentage separately?	% of carbon chain testing facility is not available in this laboratory Distillation Rang 137° C – 340° C (90% recover)
14.	Whether subject product can be dispersed in liquid or otherwise?	Sample clear colorless liquid at ambient temp
15.	Whether product is chemically modified or artificial wax otherwise?	Could not be ascertain
16.	Whether the product is petroleum oils/ oils obtained from bituminous mineral	Yes
17.	Whether the product contain by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals	Facility for oil determination in petroleum wax is not analysis in this lab
18.	Whether these oils are basis constituents of the preparations, containing bio diesel, other than waste oil	Could not ascertain
19.	Chemical Composition & properties of the product (in percentage)	Composed of mineral hydrocarbon oil and Wax
20.	Usage	End use may be ascertain at your end
21.	Any other remarks/suggestion regarding product's nature/ composition etc.	N/A

* Facility for determination of oil content in petroleum wax is available in CRCL, Pusa, New Delhi.

SR/R (Sample Remnant Returned)

31.8.15

31/8/15

Chemical Examiner, Gr-I

In respect of point No. 8, 9, 13, 15, 17, 18, 20 following was repeated:

Sr. No	Query asked	Result
8	Wax content, % mass	Could not be ascertain
9	Oil content, % mass	Could not be ascertain
13	Whether product is mixture of n-Alkane (c9-11) and paraffin wax or otherwise, please specify the percentage separately?	**% of carbon chain testing facility is not available in this laboratory** Distillation Range 137°C-340°C (90% recover)
15	Whether product is chemically modified or artificial wax or otherwise?	Could not be ascertain
17	Whether the product contain by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals	**Facility for oil determination in petroleum wax is not analysis in this lab**
18	Whether these oils are basis constituents of the preparations, containing bio diesel, other than waste oil	Could not ascertain
20	Usage	End use may be ascertain at your end

<u>It is noted that the laboratory had expressed its incapability to test a lot of relevant parameters of the product. The said report also prescribed that facility of determination of oil content in petroleum is available in CRCL Pusa, New Delhi.</u>

5.3 Thereafter another set of samples were sent to the Joint Director Central Revenue Control Laboratory, New Delhi vide test memo No. 59/2015-16 and 60/2015-16 dated 03.09.2015.The representative samples taken from Tank No. 205 and 113 were sent to CRCL New Delhi for testing on 03.09.2015. Request for testing of following parameters was made:

1. *Dropping Point*
2. *Chemical Composition of the product*
3. *Wax content, % mass*
4. *Oil content, % mass*
5. *Constituents, (i.e. fats, resins, mineral substances) % Mass*
6. *Whether the product is wax/waxes mixed with, dispersed in or dissolved in a liquid medium or otherwise?*
7. *Whether product is mixture of n-Alkane(C9-C11) and paraffin wax or otherwise, please specify the percentage separately?*
8. *Whether product is chemically modified or artificial wax or otherwise?*
9. *Number of waxes with percentage of each waxes & type, whether mineral/artificial/synthetic wax?*
10. *Whether the product is a preparation similar to polishes, creams etc. for maintaining of wooden furniture, floors or other woodwork or for footwear/leather etc. having preservative properties?*
11. *Whether the product contain by weight 70% or more ofpetroleum oils or of oils obtained from bituminous minerals*
12. *Whether these oils are basis constituents of the preparations, containing bio diesel, other than waste oil*
13. *Usage*

14. Any other remarks/suggestion regarding product's nature/ composition etc."

Along with the test memo related literature issued by International Maritime Organization and others was also sent. The Chemical Examiner, Grade – II CRCL, New Delhi vide its test report dated 17.11.2015 with respect to the representative samples taken from Tank No. 113 reported that the sample under reference was composed of mineral hydrocarbon oil more than 70% by weight. The said report of CRCL Delhi was however rejected on the ground that the said samples in respect of test memo No. 60/2015-16 contained co-mingles cargo. The test report in respect of test memo No. 59/2015-16 is not fully eligible in the document presented before us but has been reproduced in the impugned order as follows:

> *"The sample is in the form of clear colourless oily liquid. It has the characterstics of ws and having mineral hydrocarbon oil content (% by mass)=15.0.*
>
> *Aromatic content = 9.7 by wt.*
>
> *Ash content = Nil*
>
> *Pour Point = 16 deg. C*
>
> *Flash Point (RMCC) = 55 deg. C*
>
> *Actual use may be ascertained.*
>
> *To answer other queries raised in the test-memo, the sample under reference may be forwarded to India Institute of Petroleum, Dehradun, if required."*

<u>It is seen that even CRCL New Delhi also do not have answers to most of the queries as they lack the facility for proper testing and advised DRI to approach Indian Institute of Petroleum, Dehradun for the said purpose</u>**.**

5.4 On 03.02.2016, DRI wrote a letter to the Joint Director enclosing therewith literature running into 66 pages. The text of the letter is as follows:

> *"Please refer to sample of Import goods of declared description "WAKSOL 9-11 A" forwarded to your lab for testing vide Test Memo No. 57/2015-16, in respect of which your lab had given opinion in respect of some queries, but in respect of remaining queries, had shown Inability to ascertain vide Report No DRI 09 dated 31.08.2015. Thereafter, the said samples were forwarded to CRCL, New Delhi vide Test Memo No 59/2015-16. CRCL, New Delhi vide the Test Report C. No. 35-CRCL/2015/CL-401 DRI/14.09.2015 dated 13.10.2015 had given opinion in respect of only some of the queries. Further, please also refer to telephonic discussion, had with the undersigned, wherein you had informed that the testing of the subject samples for the queries can be done in outside laboratory by officers of your laboratory.*
>
> *2. In view of the above, sample of the above stated Import goods obtained from Tank No. 205 of IMC Ltd., Kandla Port is forwarded herewith vide Test Memo No. 59/2015-16 for opinion on queries mentioned in the Test Memo. Relevant Literature of the import goods and photocopy of the Test Report No DRI 09 dated 31.08.2015 of Customs Lab Kandla and Test Report C. No. 35-CRCL/2015/CL-401 DRI/14.09.2015 dated 13.10.2015 of CRCL, New Delhi are also attached herewith for your reference. It is requested to arrange for testing of these samples at the earliest possible."*

From the above letter, it is seen that while the CRCL and Customs House Laboratory, Kandla both had shown their inability to test the said material still the samples were again sent to Joint Director, Custom House Laboratory, Kandla.

5.5 They again forwarded a sample drawn from Tank No. 205 vide test memo No. 89/15-16 with request to test on following parameters:

1. *Description of goods*
2. *Whether Dropping Point/drop Melting point is more than 40degree C.*
3. *Whether Viscosity is not exceeding 10Pa.s (or 10000 cP) when measured by rotational viscometry, at a temperature of 10 degree C above the dropping point*
4. *Whether product containing mineral substance or other materials other than wax*
5. *Whether it prepared waxes/wax preparation or otherwise*
6. *Whether it can be drawn into threads, above its melting point*
7. *Any other remarks/suggestion regarding product's nature/ composition etc.*

The said sample was obtained from tank No 205 of IMC Limited, the warehoused keeper. The test memo No. mentioned in the said letter dated 03.02.2016 is 59/2015-16 however that seems to be a clerical error as the test memo No. as per RUD 8 is 89/2015-16. Thereafter two more samples were drawn from the Tank No. 101 and 205 of IMC as the said tanks contained fresh import of Waksol 9-11A. Vide test memo No. 93 and 94/2015-16 both dated 22.02.2016, the samples were forwarded to Joint Director, Custom House Laboratory with following queries:

1. Description of goods
2. Whether it has characteristics of Was
3. Wax content
4. Oil content
5. Whether Dropping Point/ drop Melting point is more than 40°C.
6. Whether viscosity is not exceeding 10pa.s(or 10000cP) when measured by rotational viscometry, at a temperature of 10°C above the dropping point
7. Whether product containing mineral substance or other materials other than wax
8. Whether it prepared waxes/ was preparation or otherwise.
9. Whether it can be drawn into threads, above its melting point
10. Any other remark/suggestion regarding product’s nature/ composition etc.

5.6 The test report in respect to of all three samples are summarised as follows in the impugned order:

S. No.	Tank No.	Test Memo No. & Date	Report No. & Date of CHL, Kandla	Test Results/ Report

1	205	89/2015-16 dtd 03.02.16	DRI-37 dtd 02.11.16	The sample is in the form of colourless**oily liquid, composed of paraffinic compound**. Test conduct with solvent/ solvent mixture as per ASTM D-721-02 and ASTM D-3235-02 does not show any oil separation. Hence, the sample may be considered as **wax preparation**.
2	101	93/2015-16 dtd 22.02.16	DRI-45 dtd 02.11.2016	The sample is in the form of colourless**oily liquid, composed of paraffinic compound**. Test conduct with solvent/ solvent mixture as per ASTM D-721-02 and ASTM D-3235-02 does not show any oil separation. Hence, the sample may be considered as **wax preparation**.
3	205	94/2015-16 dtd 22.02.16	DRI-46 dtd 02.11.2016	The sample is in the form of colourless**oily liquid, composed of paraffinic compound**. Test conduct with solvent/ solvent mixture as per ASTM D-721-02 and ASTM D-3235-02 does not show any oil separation. Hence, the sample may be considered as **wax preparation**.

It is seen that the custom house laboratory had again failed to examine the goods on the parameters prescribed by DRI and come to the conclusion that the samples may be considered as "Wax Preparation".

5.7 **As can be seen from RUD No. 15, the Joint Director, Custom House Laboratory vide letter dated 09.04.2019, two and a half years after the goods were tested, gave following findings:**

"This is reference to the Test Report issued by this Laboratory for the sample u/r it is further stated that

2. The CBIC circular No. 950, dated 01-08-2011 states that "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 Paraffin methane which has one Carbon atom, is a gas at room temperature: 'Octane' which has eight carbon atoms is a liquid. Further Carbon atom number reaches 19 and till 30 they are solid with wax like characteristics."

3.The Manufacturer's literature and certificate of analysis issued by M/s intertek for the product u/r. i.e. Waksol 9-11 states that The % content of component with Carbon 8 i.e. Paraffin oil content is 0.7% and 0.6% respectively.

*4. The oil content obtained by analysis carried out by ASTM D 721-and ASTM D3235 methods confirms this, i.e. the **Petroleum oil is less than 70%**, the Product u/r Waksol 9,11 **does not falls under chapter 2710**.*

5. Further the Manufacturer's literature states that Waksol A and Co-C1 Paraffins are blended in Proprietary ratio to produce Waksol 9-11.

6. Also the General note to HSN for Chapter 34 states "The Product obtained by the industrial treatment of Fats. oils or waxes covers under chapter 34.05.

7. Based on the above facts. this office opined that, the said product Waksol 9, 11' is a Preparation / blend of Waksol A (Hydrocarbons C14-C28) and Co-C Paraffins."

It is seen that the said report describes the definition of Paraffin as per Circular No. 950 dated 01.08.2011 of CBIC. The said report relies on the literature and Certificate of analysis issued by M/s Intertek for the product Waksol 9-11 to the effect that the percentage content of carbon-8 i.e. paraffin oil is 0.7% and 0.6% respectively. The letter also clarifies that as per the test carried out by ASTM D 721 and ASTM D 3235 methods, the petroleum oil was found to be less than 70% and therefore, the goods do not fall under Chapter heading 2710. **Based on the said facts, the letter comes to the conclusion that Waksol 9-11 is a preparation / blend of –Waksol A (hydrocarbons C14-C28) and C9-C11 Paraffin. It can be seen that the said report does not throw any light on the subject. It describes the product as preparation/ blend of Waksol A. While the earlier report, described the product as "Waksol Preparation"**. **It is seen that despite repeated requests the CRCL failed to throw any light on the nature of product except to say that it is a "wax preparation" or a preparation consisting of "Waksol A' mixed with other paraffins". It is seen that this is the description given by the importers as well.**

5.8 It appears that another letter was written by DRI to the Joint Director, Custom House Laboratory, Kandla on 30.04.2019. The said letter is not available as RUD however the response of the Joint Director dated 14.05.2019 was as follows:

> *"This is reference to your letter in F. No. DRI/AZU/GRU/Paraffin/INT-26/2015/1928, dated 30.04.2019 it is stated that*
>
> *2. The product u/r, "WAKSOL 9-11 A" does not fall under chapter 2710, i.e from 27012 to 27109900, of "Petroleum oils and oils obtained from Bituminous Minerals, other than crude; preparations not elsewhere specified or Included, containing By weight 70% or more of Petroleum oils or of oils obtained from Bituminous minerals, These oils being the basic constituents of the preparation; Waste oils", as the sample containing oils less than 70.0%*
>
> *3. The Product u/r "WAKSOL 9-11 A" also does not fall under the chapter 2712 "Petroleum jelly, Paraffin Wax, Microcrystalline Wax, Ozokerite, Lignite Wax, Peat Wax, other Mineral waxes, and similar products obtained by synthesis or by other processes, whether or not colored" since the sample having congealing point Less than 30°C,*
>
> > *(a) The congealing point of the products Petroleum Jelly, Petroleum Wax, Microcrystalline Petroleum Wax, Slack Wax and other waxes falling under Chapter 271210 to 270129090 should be more than 30°C (ASTM D 938)*
> >
> > *(b) Since the congealing point is one of the critical Parameter, as it is hot complies to standard value, other parameters like density at 70°C, Work Cone Penetration Index at 25°C (ASTM D 217), Cone Penetration at 25°C (ASTM D 937) the set of Parameter mentioned in HSN Note for 27.12, are no need to carry out further.*
>
> *4. As this sample is not any of the waxes falling under Chapter 271210 to 27129090 or not of Petroleum oils and oils obtained from Bituminous Minerals, preparation containing 70% or more than of Petroleum oils falling from 271012 to 27109900 and It is a blend/mixture of WAKSOL 'A', a synthetic Paraffin wax and Paraffin having Carbon number C9-C11. The Paraffin C C1 Is a ingredient used as carrier to improve consistency of polishes in which the WAKSOL A is a principal component used to impart water proof, wear resistant and other properties of polishes and thus the blend of Paraffin C-C11 and WAKSOL A to get the preparation WAKSOL 9-11 A is correctly falls under the Chapter 3405.20 as reported earlier."*

This letter of Joint Director, Custom House Laboratory is the primary ground for change in classification. It is seen that the said letter of Joint Director in para 2 holds that the goods are not classifiable under heading 2710. This is agreed by both sides. In para 3 of the said letter it comes to the conclusion that the goods are not classifiable under Chapter heading 2712 **on the ground that the congealing point is less than 30°Celcius**. The letter states that the said parameter is written in the HSN notes in Chapter heading 27.12 and therefore no need to carry out any other test. In para 4 of the said letter, he comes to the conclusion that the goods are classifiable under Heading 3405.20. The said letter of Joint Director, Customs House Kandla has been examined and is referred to in para 11 of the show cause notice as well as para 39.5 of the impugned order as the primary reason for excluding the goods from the heading 2712. Thus it is seen that this letter of Joint Director, Customs House Kandla is the main reason for excluding the goods from the heading 2712 and classifying under CTH 3405.

5.9 The summary of tests conducted by the revenue labs indicated the following

Test report date	Agency	Description of goods
31.08.15	Custom House Lab, Kandla	Composed of mineral hydrocarbon oil and wax
13.10.15	CRCL, New Delhi	characteristic of wax and having mineral hydrocarbon oil content of 15%.
2.11.16	CRCL, New Delhi	colourless oily liquid composed of paraffinic compound. sample may be considered as wax preparation

Thus there is no dispute as far as composition of product is concerned. It is a mixture of paraffin Wax and oil in different proportions with oil never exceeding 70%.

6 The letter dated 9.4.19 and 14.5.19 of Joint Director, Customs House Kandla are not test reports but opinions of the JD CRCL Delhi with respect to classification. While Chemical examiners are qualified to analyse the goods in terms of parameters they are not qualified to suggest or ascertain classification of goods. In the case of EAST WEST EXPORTERS 1991 (52) E.L.T. 66 (Tribunal) the tribunal has observed as follows:

> **12A** The Revenue in this appeal is mostly relying on the letter of the Chief Chemist. It has to be observed that the letter of the Chief Chemist reads more like an order on classification. Time and again, the Tribunal and Courts have pointed out that the chemical examiner has to only give his findings and results on the test carried out by him and not enter into a dialogue or exceed from that limit in expressing his opinion in the form of an order

regarding the classification of the product. It is hoped that such exercises are avoided.

In the case of HAZOOR SAHIB CHEMICALS P. LTD.2008 (226) E.L.T. 444 (Tri. - Ahmd.) the tribunal has observed as follows

> **6.5** The Chemical Examiner's report is admittedly against the importers. They have not asked for retest of the report. The submission that the Chemical Examiner should not have given the classification is relevant. The Chemical Examiner is required to give only the report on the chemical analysis conducted by him. Therefore, the suggestion about the classification should be ignored and should be considered by the adjudicating authority independently.

From the above it is apparent that the opinion of chemical examiner regarding classification should be ignored.

6.1 The opinion of the JD, chemical Laboratory Kandla/Delhishould also be ignored as the facility for testing Waksol 9-11A is not available in the Central Revenue Laboratories. This fact was noted by the CBIC in Circular No. 43/2017-Cus dated 16.11.2017. In the said circular the Revenue authorities have been advised to approach other specified labs listed in the table attached to the said circular. The relevant text of the circular is as follows:

> *"It has come to the notice of the Board that due to lack of testing facilities of certain goods in Revenue Laboratories, there is delay in clearance of the consignments of these goods due to avoidable movement of samples between Customs field formations and Revenue Laboratories.*
>
> *2. In this regard, CRCL has shortlisted the items whose samples cannot be tested in their Laboratories at present and also identified the Laboratories functioning under the other Ministries/Departments/Organizations where such samples could be tested. The list of such items and corresponding testing Laboratories are annexed herewith.*
>
> *3. The Revenue Laboratories are, presently, in the process of up-gradation. However, until Revenue Laboratories are upgraded, as a measure of trade facilitation, the Board has decided that field formations may directly forward samples of goods mentioned in column (3) of the Annexure I of this circular, to the laboratories mentioned in column (4) of the said Annexure or any other accredited laboratories empanelled by the concerned Commissionerate. The procedure for forwarding the samples to the laboratories shall be as follows :*
>
> *a. Customs formations should follow the respective standard sampling technique prescribed by the concerned laboratory for the items under question. The Commissionerate should ascertain sampling requirement with the laboratory concerned before drawing samples from the consignment. The sampling requirements may clearly be specified on the website of the Commissionerate.*
>
> *b. In cases of live consignments which cannot be cleared without getting the test reports due to its hazardous nature or for any other reason, the samples shall be forwarded to the concerned laboratory at the earliest. Further, the Commissionerates should develop a mechanism in consultation with the laboratories so as to get the test report expeditiously and preferably online.*
>
> *c. In cases where the time taken by laboratory exceeds three days, the importer should invariably be given an option to warehouse goods under section 49 of the Customs Act.*

d. Testing fee, if any, shall be paid by the importer or the exporter.

4. It is further clarified that aforementioned procedure shall not be applicable in cases where Partner Government Agencies themselves draw the sample.

5. In view of above, the Commissioners of Customs are requested to issue suitable Public Notice based on aforementioned guidelines, prescribing detailed procedures for empanelment of laboratories, techniques for drawing & dispatching of samples, mechanism to receive online reports etc., for guidance of all concerned.

6. Difficulty faced, if any, may be brought to the notice of the Board."

In the table attached to the Circular No.43/2017-Cus dated 16.11.2017 following was prescribed in respect of 'Waksol 9-11 A':

Sl No.	**Chapter No.**	**Samples to be referred**	**Suggested Laboratories**
(1)	**(2)**	**(3)**	**(4)**
10	27	19. Coking Coal	Central Institute of Mining and Fuel Research (CIMFR), Nagpur (Under Ministry of Science & Technology) CSIR-CIMFR, Barwa Road, Dhanbad 826015, Jharkhand, India Tel: 91-326-2296004/5/6. Email: director@cimf.nic.in/dcmrips@yahoo.co.in
		20. Steam Coal	Central Mine Planning & Design Institute Limited, Ranchi (Under Ministry of Coal) (A Subsidiary of Coal India Limited/ a Public Sector Undertaking of the Government India, under the Ministry of Coal), Gondwana Place Kanke Road, Ranchi – 834 031, Jharkhand, India, Phone: (+91) 651 2231850/51/52/53, Fax: (+91)651 2231447/223082
		21. Solvent C-9	Indian Institute of Petroleum (IIP), Dehradun (under Ministry of Science & Technology) CSIR – IIP, Dehradun 248 005 Email: headrpbd@iip.res.in, Phone : 0135 2525743, 2660124, Fax: 0135 2660202
		22. C-9-C-11 Liquid Paraffin	IOCL (R & D Centre), Faridabad (under Ministry of Petroleum) GM (Technology Promotion, Forecasting & Pipeline Research), Indian Oil Corporation Limited, R&D Centre, Sector 13, Faridabad 121007. E Mail: acharyagk@indianoil.in
		23. C-14-C-20 N Paraffins	IOCL/HPCL/BPCL, Mumbai, Chennai, Kochi, Vizag., Kolkata, Kanla (under Ministry of Petroleum)
		24. Petroleum Bitumen 60/70	Same as above
		25. Diesel Oil	Same as above
		26. **Waksol 9-11 A Grade**	Same as above
		27. Thinner Off Spec	Central Pollution Control Laboratories (CPCB) (Under Ministry of Environment) Ministry of Environment, Forest & Climate Change,

		28. Waste Oil/Sludge Oil/ Sludge Water/ Bilge Water/ Stop Water/ Furnace Oil	Government of India, Parivesh Bhavan, CBD-cum-office complex East Arjun Nagar, Delhi 110032 India, Tel: 91-11-22307078 Email: psms.cpcb@nic.in, adaba.cpcb@nic.in

The prescription was to approach IOCL/HPCL/BPCL, Mumbai, Chennai, Kochi, Vizag., Kolkata, Kanla (under Ministry of Petroleum) for the purpose of testing 'Waksol 9-11 A'.Later the aforesaid circular was modified by Circular No. 11/2018-Cus dated 17.05.2018 which states as follows:

Sl No.	**Chapter No.**	**Samples to be referred**	**Suggested Laboratories**
(1)	**(2)**	**(3)**	**(4)**
10	27	12. Coking Coal 13. Steam Coal 14. Solvent C-9 15.C-9-C-11 Liquid Paraffin 16.C-14-C-20 N Paraffins 17.Petroleum Bitumen 60/70 18. Diesel Oil 19. **Waksol 9-11 A Grade** 20. Thinner Off Spec 21. Waste Oil/Sludge Oil/ Sludge Water/ Bilge Water/ Stop Water/ Furnace Oil	1.NTPC Energy Technology Research Alliance (NETRA), NTPC Ltd. Address: Plot No. E-3 Ecotech-II, GreaterNoida, Gautam Buddha Nagar, Pin-201308, Uttar Pradesh 2. Central Coal Testing & Research Laboratory, Western Coalfields Limited Address Nara Nari, Road, kalpananagar, P.O. Uppalwadi Nagpur, Pin-440 026, Maharashtra 3. MSME Testing Centre, 65/1 GST Road, Guindy, Chennai, Pin – 600032, Tamil Nadu

Three more labs were notified in the said circular for testing'Waksol 9-11 A'. It is only in 7.4.2019 that the Revenue laboratories were upgraded and facility of such testing was introduced. It can be seen from the test reports dated 31.8.15, 13.10.15 and 2.11.16 that JD Chemical Laboratory Kandla/ Delhi had advised revenue to approach other labs for the purpose of this testing due to their inability. The inability is apparent as the Labs in Kandla/ Delhi had failed to examine the goods on large number of parameters as can be seen from aforesaid test reports. In such circumstances the opinion of JD Chemical Laboratory Kandla/ Delhi becomes an opinion without relevant test parameters.

6.2 The opinion of Joint Director, Customs House Kandla is also incorrect for the reason that he has misinterpreted the HSN Explanatory notes. A reason given by the JD Custom Laboratory Kandla, and repeated by the Adjudicating authority is that goods are not classifiable under heading 2712 is that the congealing point of goods is below *30 °C*. The

HSN notes for the said headings are also examined in para 44 of the impugned order. The Explanatory notes read as follows:

"(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 "Montanpitch" are ester waxes extracted from lignite. They are hardand 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, consistingof:*
>
> > *(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****."*

A perusal of the Explanatory notes makes it clear that it divides the Chapter Tariff Heading 2712 into two broad sections. A) Petroleum Jelly and B) Paraffin Wax, microcrystalline petroleum slack wax etc. The section (A) Petroleum Jelly and said section of the Explanatory Notes prescribes as follows:

> "**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."**

There is no such requirement given in respect of products other than "petroleum jelly" in the said Explanatory Notes. The sole reason for excluding the goods from the scope of Chapter heading 2712 is the fact that the congealing point in the sample was found to be less than 30°C. The Joint Director, Custom House Laboratory failed to notice that the requirement of congealing point is solely for petroleum jelly and not for other products like Paraffin wax, micro crystalline petroleum wax, slack wax etc. It can be under Section (B) of the HSN Explanatory Notes to Chapter heading 2712 reproduced above. It is seen that the Joint Director, CRCL has clearly mentioned that since the sample is having congealing point less than 30°C, the goods would not fall under Chapter heading 2712. The conclusion is based on the presumption that since the congealing point of Petroleum jelly is prescribed to be more than 30°C, it automatically implies that the congealing point of all other products falling in the said heading should be more than 30°C. There is no reason for the said presumption. There is no such thing mentioned in the Explanatory Notes to Chapter Tariff Heading 2712. The HSN notes to Chapter Tariff Heading 2712 merely prescribes that to qualify as petroleum jelly one of the parameters necessary is that the congealing point should not be less than 30°C. Commissioner in his order relies on the observations of the Director. The report of the Joint Director CRCL does not refer to any authority and therefore cannot be accepted. It only refers to ASTM D 938 which is only a method of testing congealing point. There is no reason to come to presumption that for all other products unless the congealing point is more than 30°C, it would not fall under the said heading. The report of the Joint Director, Custom House Laboratory is obviously incorrect and has to be discarded.

6.3 The appellants had asserted before the Commissioner that the reliance cannot be placed on the opinion of Joint Director, Custom House and if any reliance is to placed on his opinion then cross examination should be given to the noticee. The said request of cross examination of Joint Director-CRCL was not accepted on the ground that he has relied on the detailed manufacturing process and reliable literature given by the manufacturer themselves which cannot be disputed. Reliance was placed on the decision of Tribunal in the case of Dharampal Premchand Ltd. 2020 (373) ELT 423 (Tri. All.) wherein Tribunal has held as under:

> *"8. ...As such, we are of the view that the opinion of the chemical examiner holding that the product was composed of tobacco, silver flecks, fragrance and has the characteristics of scented tobacco would equally apply to the product being manufactured by the appellant. Further the statement of the General Manager admitting that they were adding silver and scented flavour to the other ingredients of their product manufactured and sold under the brand name of 'Baba' supports the opinion of the Chief Chemist, which cannot be dismissed lightly. As such, we hold that reference and reliance to the said test report of Chemical Examiner cannot be faulted upon.*
>
> *Further, though the chemical examiner has opined on the correct classification, which may not be within his jurisdiction,* ***we note that Commissioner has primarily gone by the test report of the chemical examiner and has not adopted his opinion on classification straightaway without discussing the ingredients*** *etc. and the two entries in the Excise Tariff.* ***He has independently examined the issue and such contention even if accepted, does not tilt the case in favour of the assessee****."*

On the strength of above decision and findings, the impugned order reaches the conclusion that no new fact is likely to emerge by the cross examination of the Joint Director-CRCL and therefore the request of cross examination was denied. We find that the CRCL has repeatedly indicated their inability to examine /test these goods. Para 3.4, 3.4.1., 3,5, 3.6 and 3.7 above provide ample evidence of this. In fact the Circular No. 43/2017-Cus dated 16.11.2017 and Circular No. 11/2018-Cus dated 17.05.2018 both indicate that CRCL is not competent to test these goods (incidentally these circulars classify under Chapter 27 and not chapter 34). In these circumstances when CRCL has expressed its inability to test the goods repeatedly. In such circumstances relying on the opinion of Joint Director is incorrect. The report of Joint Director is also silent on the parameters on which the samples were supposed to be tested as indicated in DRI test memo No. 89/15-16, 94/15-16 and

95/15-16. Infact when the Joint Director gave his report dated 14.05.2019 many of the tests recommended by DRI were not done. In-fact all the test reports of tests that could be done earlier during 2015 to 2019 were available when he had given a non-committal report on 09.04.2019. The report of Joint Director is without any basis. In this background, the cross examination of the Joint Director becomes very relevant. It is noticed that the cross examination has been wrongly denied. The report of Joint Director, Custom House Laboratory needs to be rejected on this count also.

7 Heading 2712 is reproduced below:

Tariff Item	Description of article
2712	**Petroleum jelly, paraffin wax, microcrystalline petroleum wax, slack wax, ozokerite, liginite 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

From the above heading it is apparent that any mixture of Paraffin Wax with oil would be classified under heading 2712. If the oil content is less that 0.75% then it would fall under CTH 2712 2000 and if it is more than 0.75% it would fall under CTH 2712 9040. Two of the reports dated 31.8.15 and 13.10.15 confirm that the goods are a mixture of wax and oil. The third one dated 2.11.16 also describes as “colourless oily liquid composed of paraffinic compound” and “wax preparation”. Thus it can be considered that the goods are a mixture of wax and oil. Consequently the correct classification of goods will be CTH 2712 2000 or 2712 9040 depending on proportion of oil. If the oil content is less that 0.75% the it would be classifiable under CTH 2712 2000 and if the oil content is more that 0.75% the it would be classifiable under CTH2712 9040. It is seen that the goods are covered specifically by these headings. In order to take it out of CTH 2712 it has to be shown that the alternate heading is more specific.

8. The Revenue have also relied on the product data sheet. The product data sheet is reproduced below:

Intertek Commodities

CERTIFICATE OF ANALYSIS

Page 1 of 1

Client	Sasol Chemicals a division of Sasol South Africa (Pty) Ltd
Product	Waksol 9-11
Sample Origin	Land Tank Sampling (After Standing) Bidvest Tank Terminals Bay 3 TK834

Sampling Method	ASTM E300	Sample Number	[illegible]
Date Sampled	13 November 2015	Time Sampled	03:00
Date Tested	13 November 2015	Time Tested	12:00
Batch Number		Order Number	
Weather Condition			
Intertek Job No	[illegible]/2015	Client Ref. No	

TEST DESCRIPTION	METHOD	SPECIFICATION	RESULT
Appearance	ASTM D4176	Bright and Clear	PASSES
Colour (saybolt)	*ASTM D156	+ 15 min	+21
Density @ 20°C kg/l	*ASTM D4052	Report	0.7788
Density @ 35°C kg/l	*ASTM D4052	Report	0.7681
Flash Point (closed cup) °C	*ASTM D93	48 Min	59.0
CARBON DISTRIBUTION			
C8 and Lighter mass %	GC	Report	3.6
C12 - C20 mass %	GC	Report	47.0
C21 - C30 mass %	GC	Report	33.0
C9 - C11 mass %	GC	Report	19.4

NB: * SANAS ACCREDITED TEST + REFERENCE METHOD

Krishan
Krishan Kumar
19.1.2016

Technical Signatory

[illegible]

Durban, Island View Laboratory

[illegible]

sanas

DIN No. 20210271ML0000612455

sasol

product data sheet

WAKSOL 9-11

Code 1450 Revision 3 9 October 2012

Properties	Test method	Units	Specification	Typical values
Flashpoint (Closed cup)	ASTM D 93	°C	48 min	49
Appearance	ASTM D 4176	-	Bright and clear	Pass
Colour	ASTM D156	Saybolt	+ 15 min	24
Carbon Distribution	Sasol 8047	mass %	-	
C8 and lighter			-	0.7
C9-C11			-	19.7
C12-C20			-	52.3
C21-C30			-	27.3
Density @ 20°C	ASTM D 4052	Kg/l	-	0.7783
Density @ 35°C	ASTM D 4052	Kg/l	-	0.7689

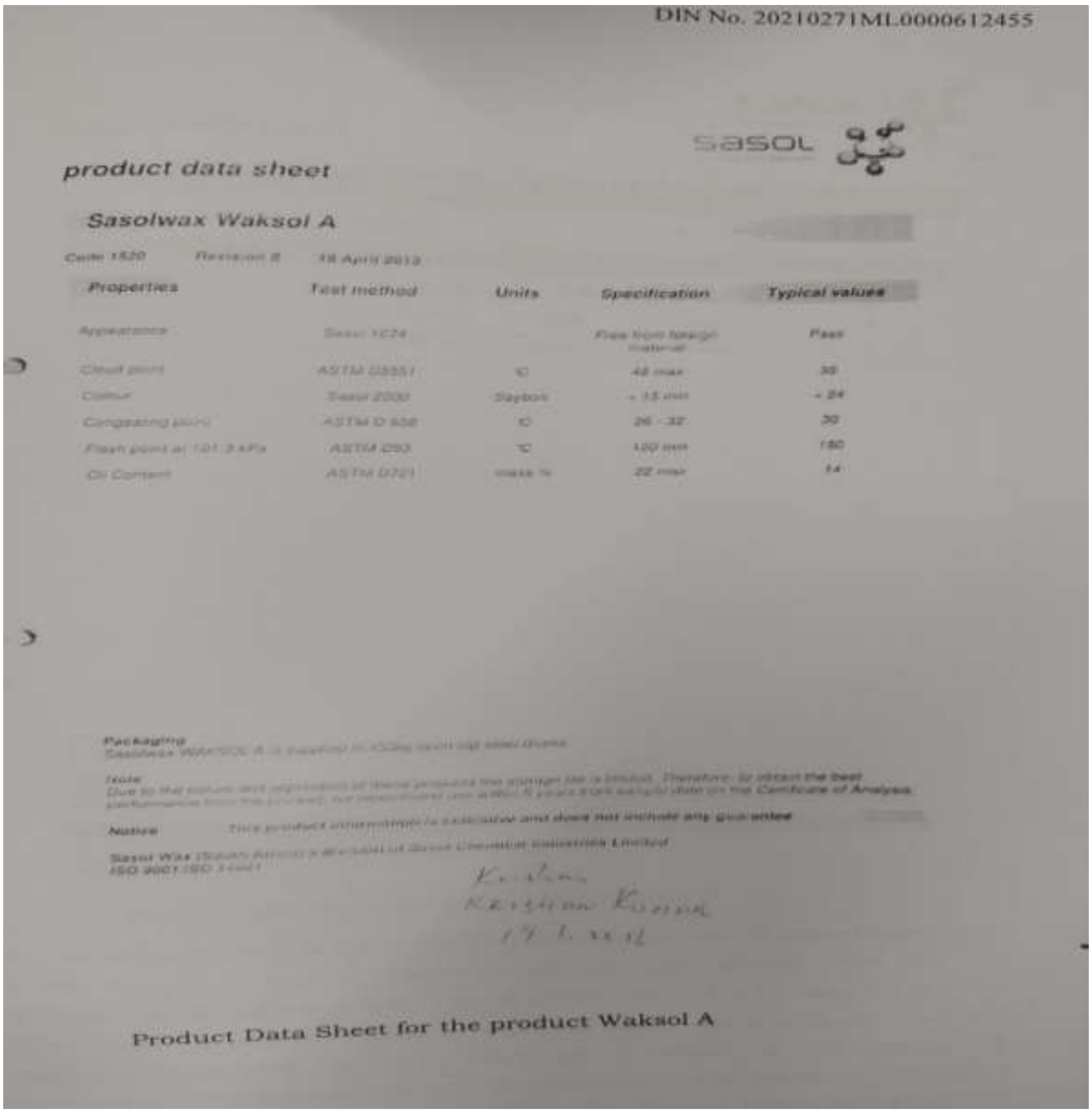
Packaging
WAKSOL 9-11 is available in liquid in bulk

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

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

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

Krishan
Krishan Kumar
19.1.2016



DIN No. 20210271ML0000612455

sasol

product data sheet

Sasolwax Waksol A

Code 1520 Revision 8 18 April 2013

Properties	Test method	Units	Specification	Typical values
Appearance	Sasol 1C24		Free from foreign material	Pass
Cloud point	ASTM D5551	°C	48 max	38
Colour	Sasol 2000	Saybolt	+ 15 min	+ 24
Congealing point	ASTM D 938	°C	26 - 32	30
Flash point at 101.3 kPa	ASTM D93	°C	120 min	150
Oil Content	ASTM D721	mass %	22 max	14

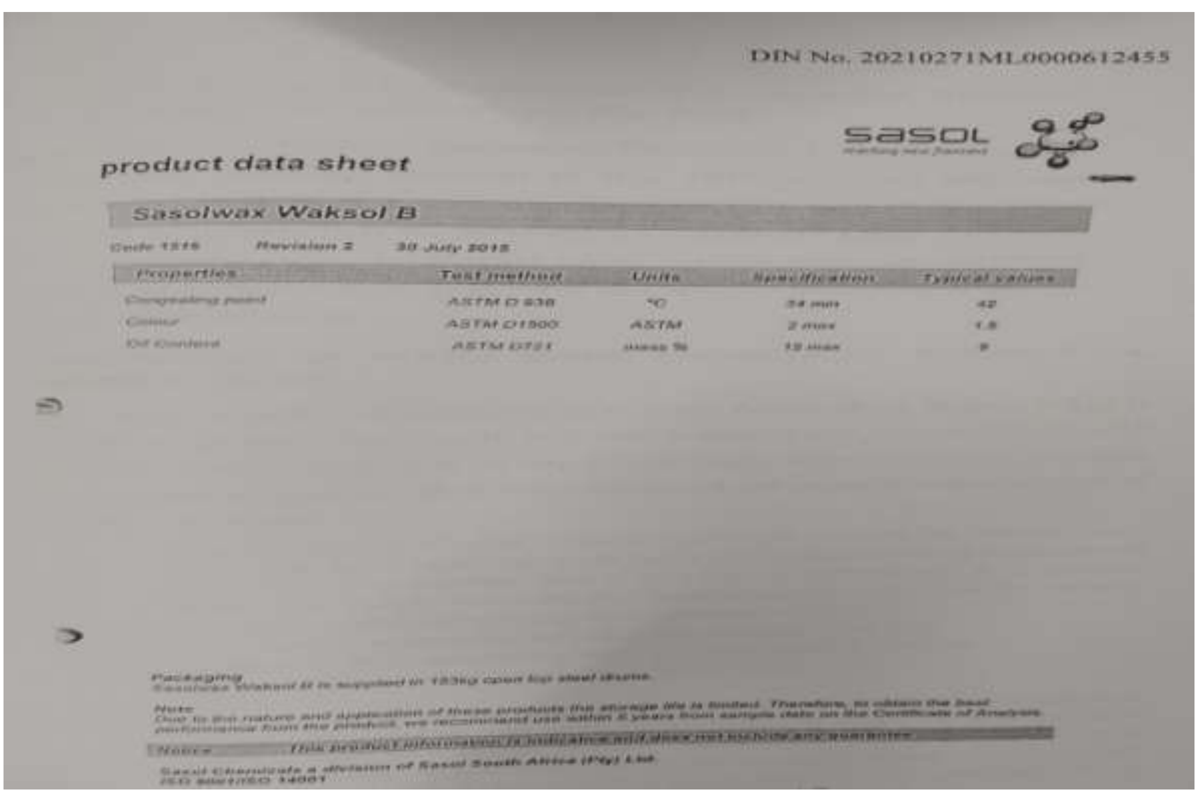
Packaging

Note

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

Krishna Kumar

Product Data Sheet for the product Waksol A



DIN No. 20210271ML0000612455

sasol

product data sheet

Sasolwax Waksol B

Code 1516 Revision 2 30 July 2015

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

Packaging

Sasolwax Waksol B is supplied in 183kg open top steel drums.

Note

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

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

Sasol Chemicals a division of Sasol South Africa (Pty) Ltd

ISO 9001/ISO 14001

8.1 Revenue also obtained the details of the physical properties of the said product from the office of Director General of Shipping. The physical properties of the said product were detailed in the PPR Product data

Reporting Form received from Directorate General of Shipping, Mumbai in following terms:

WAKSOL 9-11A:-

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

WAKSOL 9-11B

Property	Units	Qual.	Lower Value	Upper Value	References/ Comments
Molecular Weight	Daltons	~	112	910	Manufacture data
Density @ 20˚C	(kg/m3)	=0.765	0.76	0.78	MSDS
Flashpoint (CC)	(˚C)	~	48	56	MSDS
Boiling Point @ 101.3kPa	(˚C)	~	≥130	≤340	Measured
Melting Point/ Pour Point	(˚C)	~	23	49	Manufacture data
Water Solubility @ 20˚C	(mg/I)				Insoluble
Viscocity @20˚C	(mPa.s)	Highly viscous with wax particles			Manufacture data
Temp at	(˚C)	=	25		

which viscosity is 50 mPa.s					
Vap. Press @20˚C	(Pa)	=	≥2.3		Manufacture data
Autoignition Temp	(˚C)	=	≥232		MSDS
Explosion Limits	(%v/v)	~	≥0.6	≤7	Manufacture data
Carriage Temperature	(˚C)		40		
Unloading Temperature	(˚C)		40		
MESG	(mm)	min	2.01		Calculated based on components in the mixure

8.2 The Revenue had also conducted an inquiry with M.s Apratim International Private Limited who is a marketing agent for M/s Sasol, South Africa regarding the manufacturing process and end use etc. M/s Apratim International Private Limited provided certificate of analysis, product data, material safety data sheet of product Waksol 9-11A and also the manufacturing process of Waksol 9-11A print out of e-mail received from manufacturer M/s Sasol, South Africa. The said manufacturing process is available in para 4.2 above.

8.3 The Commissioner noted that as per product data sheet, the oil content (% by mass) in Waksol A and 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. From the above two sources i.e. report of Directorate General of Shipping and the manufacturing process provided by M/s Sasol, South Africa, the impugned order reaches a conclusion that Waksol 9-11A and Waksol 9-11B were blended / mixture and contained n-alkanes (C9-C11) and Paraffin Wax. From the above facts, he concluded that since the oil requirement for the purpose of classification under heading 2710 is a minimum of 70%, the said product could not be classified under heading 2710.

8.4 The observations in para 8.1, 8.2 and 8.3 above only relate to exclusion of classification from the Chapter Tariff Heading 2710 on the ground that the goods do not contain more than 70% mineral oil. The appellants are not contesting classification under CTH 2710. They did not contest it even earlier when the matter was remanded. Even in remand the direction was to examine classification under Chapter Tariff Heading 2712 and not under Chapter Tariff Heading 2710.

9 The Commissioner, relies on the opinion of JD Custom House Lab Kandla letter dated 19.4.2019 for reliance on the following general note to Chapter 34 of HSN :

> "GENERAL
>
> **This Chapter covers products mainly obtained by the industrial treatment of fats, oils or waxes** (e.g., soap, certain lubricating preparations, prepared waxes, certain polishing or scouring preparations, candles). It also includes certain **artificial products**, e.g.,"

On the basis of above note, the Commissioner came to the conclusion that the chapter 34 is applicable to products mainly obtained by industrial treatment of fats, oils or waxes. This note does not say that all products obtained by the industrial treatment of fats, oils or waxes would be covered in this chapter.Thus reliance on this note is not proper**.**AgainFisher Tropsch process was not discussed.

10. Now we examine classification under CTH 2712. The impugned order places reliance on the exclusion clause of the Explanatory Notes to Chapter Tariff Heading 2712. The said exclusion clause refers solely to the alternate classification 3404. **There is absolutely no mention of any exclusion from the heading 2712 going to the Chapter Tariff Heading 3405.** The exclusion clause in explanatory notes of HSN to heading 2712 only takes some goods from CTH 2712 to heading 3404 and not to Chapter Heading 3405 as claimed by the revenue. The Chapter Tariff Heading 3404 specifically excludes the goods manufactured using Fischer Tropsh Process and classifies the same back in the heading 2712. The said explanatory notes to heading 3404 reads as follows:

> "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) ………………."

Thus it is apparent that Waksol, being a product of Fisher Tropch Process is not covered in heading 3404 but as wax in Chapter Tariff Heading 2712. The heading 2712 also specifically includes in its fold the wax containing oil as can be seen from the Heading 2712 2000 and 2712 9040. Thus, the product being "Paraffin wax" mixed with "paraffin oil" is specifically covered in Chapter Tariff heading 2712. HSN Notes to Customs Tariff Heading 2712 clearly prescribe that the heading also includes products similar to those referred in the heading and obtained by synthetic or by any other process (e.g. synthetic paraffin wax, synthetic microcrystalline wax). In the instant case, the Waksol A is generated by a synthetic process from various gases and therefore, merits inclusion in heading 2712. The CRCL opinion also states that Waksol 9-11A is a synthetic Paraffin Wax.

11. The appellant had urged before the Commissioner that the product is obtained from synthetic route by Fischer Tropsch process where starting material is natural gas reformed into synthesis gas. After the fischer tropsch process, the synthetic gas is distilled to get paraffinic hydrocarbons. It was contended that the imported product is a mixture/ preparation of paraffin hydrocarbons. It was contended that Waksol 9-11A is a mixture n-paraffin below C 18 which is the oil content and N paraffin above C 18 which is the wax content. The product is composed of 100% paraffin of different molecular weight and rightly classified under Custom Tariff Heading 2712. Learned commissioner has argued that use of Fischer Tropsch process ends upon the manufacturing of Waksol A/ Waksol B only. Thereafter Waksol C9-C11 and paraffin are blended in proprietary ratio to produce Waksol 9-11A which is a liquid at room temperature (20 deg.C). On the basis of above facts, the Commissioner has come to the conclusion that the said goods are not paraffin wax but are goods manufactured from paraffin wax. It has been held in the impugned order that blending of Waksol A/Waksol B that C9-C11 and paraffin results in a different product. The said product is called Waksol 9-11A and Waksol 9-11B depending upon the blending of the product. On the ground, he held that the said product areother than paraffin wax and not classifiable under heading 2712. The commissioner further held that from product data sheet of the manufacturer M/s Sasol South Africa,it is noticed that the oil content (% by mass) in Waksol A and Waksol B which are main component to be blended with C 9-C 11 n-paraffin in a proprietary ratio to produce Waksol 9-11A and Waksol 9-11B are 14% and 9%. He holds that for classification of the goods under tariff item 27122000 paraffin wax should have oil content by weight less than 0.75% of oil and therefore, the goods are not classifiable under heading 27122000. On this ground he rejects the contention of the appellant that the goods are classifiable under heading 2712. The text of heading 2712 is reproduced below:

Tariff Item	Description of article
2712	**Petroleum jelly, paraffin wax, microcrystalline**

	petroleum wax, slack wax, ozokerite, liginite 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

It can be seen that in heading 2712 while subheading 2712 2000 prescribes as a "-" entry

"Paraffin wax containing by weight less than 0.75% oil".

The subheading 2712 2040 reads as under:

"Paraffinwax containing by weight 0.75% or more of oil",

It can be seen that Paraffin wax containing oil is specifically covered in CTH 2712. Therefore, the argument that goods cannot be classified under heading 2712 because they contain more than 0.75% of oil is misplaced and without authority.

11.1 The customs Tariff on the webpage of CBIC website reads as follows:

SECTION-V 221 CHAPTER-27

2711 19 90	--- Other	kg.	10%	-
	- *In gaseous state :*			
2711 21 00	-- Natural gas	kg.	10%	-
2711 29 00	-- Other	kg.	10%	-
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	kg.	10%	-
2712 10 90	--- Other	kg.	10%	-
2712 20 00	- Paraffin wax containing by weight less than 0.75 % of oil:	kg.	10%	-
2712 90	- *Other :*			
2712 90 10	--- Micro-crystalline petroleum wax	kg.	10%	-
2712 90 20	--- Lignite wax	kg.	10%	-
2712 90 30	--- Slack wax	kg.	10%	-
2712 20 4 0	- Paraffin wax containing by weight less than 0.75 % of oil:	kg.	10%	-
2712 90 90	--- Other	kg.	10%	-

It is seen that the description of tariff item 2712 90 40 is exact copy of the tariff item 2712 2000. This is obviously an error.

11.2 Finance Act, 2010. Introduced following changes in Customs Tariff.

"(2) in Chapter 27, –

(a) for sub-heading 2712 20 and tariff items 2712 20 10 and 2712 20 90 and the entries relating thereto, the following tariff item and entries shall be substituted, namely : —

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential
(1)	(2)	(3)	(4)	(5)
"2712 20 00	- Paraffin waxcontaining by weight less than 0.75% of oil	kg.	10%	-"'

(b) after tariff item 2712 90 40 and the entries relating thereto, the following tariff item and entries shall be inserted, namely :—

Tariff Item	Description of goods	Unit	Rate of duty	
			Standard	Preferential
(1)	(2)	(3)	(4)	(5)
"2712 90 40	--- Paraffin wax containing by weight 0.75% or more of oil	kg.	10%	-";

CTH 2712 in website of CBIC does not conform to the changes made by the Finance Act 2010 against the entry 2712 2000. Apparently the authorities failed to notice the entry 2712 2000 pertained to "Paraffin wax containing by weight 0.75% or more of oil".Therefore all mixtures of Paraffin Wax and mineral oil (less than 70%) are classifiable under heading 2712. The test report describes the goods as "Wax Preparation" (para 3.7.1) and classification 2712 2000 specifically covers "Paraffin wax containing by weight 0.75% or more of oil "meaning thereby that Wax containing oil in excess of 0.75% would fall under heading 27129040. In these circumstances the goods consisting of Wax mixed with oil would specifically fall under heading 2712. They would fall under 2712 2000 if the oil content is less than 0.75% and 2712 9040 if the oil content exceeds 0.75%. In case of Waksol 9-11 A & B, the oil content is more than 0.75% therefore the appropriate heading would be 2712 9040.

12. The remand order of Tribunal has specifically asked the adjudicating authority to examine the usage of the goods imported. The appellant had contended before Commissioner that the goods are used in the manufacture of chlorinate paraffin and are not used a polishes. The appellant had also asked that the HSN Explanatory Notes states that the preparation covered under Chapter Tariff Heading 3405 are often put up for retail sale. The impugned order relies on RUD No. 21, a letter dated 04.02.2016 of M/s Apratim International Private Limited addressed to

DRI, Gandhidham enclosing information regarding Waksol C9-C11 and C9-11 Paraffin. In the documents submitted by Apratim International contained a letter issued by JR Beigley, Sr. Scientist wherein it is stated that Waksol 9-11 is used for chlorination and in manufacturing of paints. However they have not provided any use of Waksol 9-11A. The Commissioner in turn relies on the website http://coatings.specialchem.com/product/a-sasol-sasolwax-waksol-awhich contains details of a product described as

> ***"SasolwaxWaksol Ais fischer-tropschunmicronized wax by Sasol. It has straight chain of hydrocarbons, high melting point, low viscosity and excellent harness. SasolwaxWaksol A is suitable for paint strippers for wood surfaces and protection for wood surfaces."***

It is noticed that the product listed in the website is not Waksol 9-11A but, 'Sasol Wax Waksol A'. The impugned order extracts only a part of the entire information, the said page requires as controlled access. It is noticed the portion i.e. visible with partial access shows the product type as Waksol Chemical composition of the product shows as '**Fischer TropschUnmicronizedWax**'. The page also shows as physical form as powder not liquid. The comparison between 'SasolwaxWaksol A' and Waksol 9-11 or Waksol 9-11B is not proper as it is not established that both of them are same products.

12.1 The impugned order classifies the product Waksol A under Customs Tariff Heading 3404. It is seen that the Show Cause Notice does not make any charge for classification of any goods under Customs Tariff Heading 3404. Even in the earlier proceedings before the Tribunal, wherein remand order was issued, there was no claim made for classification under CTH 3404. In case of Ajanta Manufacturing Ltd. 2019 (369) ELT 1067 following has been observed:

> "**5.2** With regard to the other issue i.e. change in classification of the subject goods during the course of adjudication proceedings, we are of the view that since classification made in the assessment order was not proposed in the Show Cause Notice, the said order cannot go beyond the scope and ambit of the Show Cause Notice and should only confine to the findings, whether the proposals made in the Show Cause Notices for different classification should sustain or not. Since the Adjudicating Order had entirely changed the classification of the product, as proposed in the Show Cause Notice from 6914 90 90 to 6909 90 90, without issuing any notice to the appellant, we are of the view that differential duty confirmed under the changed classification should also not stand for judicial scrutiny. Accordingly, it is held that the impugned order confirming the differential duty is not proper and justified."

In case of Toyo Engineering India Limited 2006 (201) ELT 513 (SC) following has been held:

> **"16.** Learned counsel for the Revenue tried to raise some of the submissions which were not allowed to be raised by the Tribunal before us, as well. We agree with the Tribunal that the revenue could not be allowed to raise these submissions for the first time in the second appeal before the Tribunal. Neither adjudicating authority nor the appellate authority had denied the facility of the project import to the respondent on any of these grounds. These grounds did not find mention in the show cause notice as well. The Department cannot be travel beyond the show cause notice. Even in the grounds of appeals these points have not been taken."

Since there was no notice to appellant seeking to classify any goods under Customs Tariff heading 3404. The order in so far as it classifies goods under Customs Tariff Heading 3404 cannot be sustained.Moreover in the remand order in the instant case there was a specific finding as follows

> "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."

In view of above it is not open to revenue to classify any of the disputed goods under heading 3404, without challenging the remand order. The classification under CTH 3404 is therefore unsustainable.

13. In the remand order specific directions were given to ascertain the actual use of the goods and if the same is used as polish. The directions were as follows

> "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. "

The fact that the HSN to CTH 3405 prescribes that these goods are often sold in retail implies that the goods under CTH are not in the nature of raw materials but in the nature of finished goods like polishes. The appellants have produced evidence in the shape of statements of consumers that the goods are used for manufacture of chlorinated paraffins. The SION norm also includes C10-C30 as an input for manufacture of chlorinated paraffins. No evidence of actual use as polish has been produced while substantiated evidence of its use as raw material for manufacture of chlorinated paraffins is available. The impugned order holds that the 'use' of goods for manufacture of chlorinated paraffin wax is not a decisive consistently. His argument being that more important criteria is the tariff and the HSN. Thus, the order fails to bring out any positive evidence of the use of goods as polish falling under CTH 3405.

13.1 The appellants have also relied on the test report of Waksol 9-11 A in case of another importer, namely KLJ Resources Ltd. The test memo reads as under

Test Memo No, & date	18/2019-20
Declared Description of Goods	Waksol 9-11A Grade
Marks on Representative Samples	C-2
Date of Drawl of Representative Samples	08.08.2019 under Punchnama drawn at Adani Hazira Port, hazira, Surat from Tank No. T-98
Name of Importer (M/s)	KLJ Resources Ltd.
Name of CHA (M/s)	Rishi Kiran logistics Pvt. Ltd.
Bill of Entry No & Date	4273986 dated 29.07.2019
Test queries/request for Testing of the samples for/to ascertain	i. What is the composition of product ii. Whether the product obtained by the Industrial Treatment of fats, oils or waxes iii. Oil content (%by weight) iv. Whether the product is mixture of separate chemical compounds v. What is the dropping point of product vi. What is viscosity of product measured by rotational viscometer at a temperature of 10 degreeCelcius above dropping point vii. Whether at 20 deg centigrade the product is transparent of translucent viii. Whether the product if soft or brittle at 20 degree Centigrade ix. Whether the product can be drawn into threads above melting point x. Whether the product takes a polish when gently rubbed xi. Whether the product having waxy character xii. Usage of product whether the product can be used in polishes, creams and similar preparations for footwear or leather or maintenance of wooden furniture floors of other woodworks or coachwork, sourcing pastes and powders and other scouring preparations? xiii. Any other important information about the product xiv. Technical opinion of laboratory regarding appropriate classification of the product under Customs Tariff

All the questions asked in the test report are extracted from the Explanatory notes to CTH 3404. The Explanatory notes read as follows

34.04 - **Artificial waxes and prepared waxes.**

3404.20 - Of poly(oxyethylene) (polyethylene glycol)

3404.90 - Other

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

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

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

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

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

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

(1) a dropping point above 40 °C; and

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

In addition, such products generally display the following properties :

(a) they take a polish when gently rubbed;

(b) their consistency and solubility depend largely on temperature;

(c) at 20 °C :

(i) some are soft and kneadable (but not sticky or liquid) (soft waxes), others are brittle (hard waxes);

(ii) they are not transparent but may be translucent;

(d) at temperatures above 40 °C, they melt without decomposing;

(e) just above their melting point they cannot easily be drawn into threads;

(f) they are poor conductors of heat and electricity.

While the test report seeks examination on parameters necessary for classification under CTH 3404, it is seen that the SCN does not even allege that goods are classifiable under heading 3404. The test report obtained was as follows

"RETEST REPORT

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

Sr. No.	Parameter	Values	Remark
1	Density at 15˚C	0.7843 gm/ml	
2	% n Paraffins below C 18 (by GC) (Wax)	38.72	Less than 70%

3	% n Paraffins above C 18 (by GC) (Wax)	61.28	Above 30%
4	Distillation characterstics IBP 5% recovery 30% recovery 90% recovery 92% recovery	 164˚C 171˚C 320˚C 357˚C 369˚C	

The pointwise reply is as under:-

(i) The sample is composed of paraffin wax with n Paraffins

(ii) No comment

(iii) N Paraffin content (Oil) is 38.72% By Gas chromatography analysis

(iv) The sample is a mixture / Preparation of Paraffin and n Paraffin

(v) Not applicable

(vi) Not applicable

(vii) The sample is hazy at 20˚C

(viii) The product is soft mass at 20˚C

(ix) No, it can no be drawn into threads

(x) No. it is in liquid form

(xi) The product is Oily liquid

(xii) May be ascertained at your end

(xiii) & (xiv) : The details are mentioned above:

As per above parameters tested here, technical literature available/ supplied, the sample under reference is a Mixture / Preparation of Paraffin wax with n Paraffins."

From the above report it is apparent that to question (x) on the test memo

(X) Whether the product takes a polish when gently rubbed

The reply of the Laboratory is **"No, it is in liquid form".**This is a requirement for classification under heading 3404 in terms of Explanatory Notes reproduced above. Explanatory notes also prescribe that Dropping Point should be above 40 °C. The test report is silent on that aspect.Thus it is apparent that the product 'Waksol 9-11A' fails a specific requirement for classification heading 3404. The test report also asks the Lab the following question

(xii) Usage of product whether the product can be used in polishes, creams and similar preparations for footwear or leather or maintenance of wooden furniture floors of other woodworks or coachwork, sourcing pastes and powders and other scouring preparations?

The answer of the lab is

(xii) May be ascertained at your end

Thus even Labs have no positive evidence of its use as Polishes. In test memo 59/2015-16 and 60/2015-16 dated 03.09.2015 the lab was specifically asked

> *10 Whether the product is a preparation similar to polishes, creams etc. for maintaining of wooden furniture, floors or other woodwork or for footwear/leather etc. having preservative properties?*

The test report was silent on this aspect. From the above it is apparent that no evidence whatsoever of the use of this product as Polish is has been produced. The labs have also refused to comment on this aspect. In the remand order specific directions were given to ascertain the actual use of the goods and if the same is used as polish. The fact that the HSN to CTH 3405 prescribes that these goods are often sold in retail implies that the goods under CTH are not raw materials but in the nature of finished goods like polishes. The appellants have produced evidence in the shape of statements of consumers that the goods are used for manufacture of chlorinated paraffins. SION norm for Chemical products A 3105 notified by central government under FTP also lists C10-C30 paraffins as a raw material for manufacture of Chlorinated Paraffin Wax.No evidence of actual use as polish has been produced while substantiated evidence of its use as raw material for manufacture of chlorinated paraffins is available. The impugned order holds that the 'use' of goods for manufacture of chlorinated paraffin wax is not a decisive factor. His argument being that more important criteria is the tariff and the HSN. Thus, the order fails to bring out any positive evidence of the use of goods as polish falling under CTH 3405.

14. We also note that the extended period of limitation has been invoked. It is seen that the appellants have described goods as Waksol 9-11A ,Waksol 9-11B, Waksol A or Waksol B. It is seen that even CBIC in Circular dated 16.11.2017 and 17.05.2018 had described the goods as classifiable under Chapter 27 (see para 6.1 above). It is seen that the term is well known as can be seen from the fact the even DG shipping has all the relevant particulars available to him. As can be seen from above discussion, the matter relates to classification and is very complex in nature. It requires not only significant understanding of chemistry but of the Explanatory Notes to HSN. In these circumstances, we cannot say that the appellants cannot have a bonafide view regarding the classification of goods. Thus, extended period of limitation cannot be upheld. There was no mis-declaration or attempt to suppress and

therefore the extended period of limitation cannot be invoked. These views are supported by the following case lawcited by the appellant and referred to in para 2.15 above.

> *"14. At the outset, we must note that the adjudicating authorities while coming to their respective conclusions, especially the Commissioner of Customs (Appeals) have extensively referred to online sources such as Wikipedia to support their conclusion. While we expressly acknowledge the utility of these platforms which provide free access to knowledge across the globe, but we must also sound a note of caution against using such sources for legal dispute resolution. We say so for the reason that these sources, despite being a treasure trove of knowledge, are based on a crowd-sourced and user-generated editing model that is not completely dependable in terms of academic veracity and can promote misleading information as has been noted by this court on previous occasions also [Commissioner of Customs, Bangalore v. Acer India (P) Ltd. - (2008) 1 SCC 382, para 17 = 2007 (218) E.L.T. 17 (S.C.) = 2007 taxmann.com 219]. The courts and adjudicating authorities should rather make an endeavour to persuade the Counsels to place reliance on more reliable and authentic sources."*

It is seen that there was no seizure of goods while no goods were available for confiscation still confiscation has been ordered and redemption fine has been imposed. Larger Bench of Tribunal in case of Shiv Kripa Ispat Ltd. 2009 (235) RLT 623 (Tri.) has observed as under:

> **"9.** We have given careful consideration to the submissions. As rightly pointed by the learned counsel, the Hon'ble High Court of Punjab & Haryana, in *Raja Impex* case(supra), has rendered decision on identical issue. One of the substantial questions of law placed before the High Court by the department was whether redemption fine under Section 125 of the Customs Act could be imposed where the goods were neither available for confiscation nor cleared under bond/undertaking. The Hon'ble High Court followed the ratio of the Apex Court's judgment in Weston Components case and held that, as the goods in question had been allowed to be cleared without execution of any bond/undertaking by the importer, no redemption fine could be imposed under Section 125 of the Customs Act in lieu of confiscation. Reproduced below is the relevant part of the High Court's judgment.
>
>> "12. It may also be noticed here that in the case of *M/s. Weston Components Ltd.* v. *Commissioner of Customs, New Delhi* (supra), the goods were released to the assessee on an application made by it an on the execution of a bond by the assessee and in those circumstances, the Hon'ble Apex Court held that the mere fact that the goods were released on the bond being executed would not take away the power of custom authority to levy redemption fine. A reading of the judgment/order of the Hon'ble Apex Court in *M/s. Weston Components Ltd.* v. *Commissioner of Customs, New Delhi* (supra), would show *that the Apex Court has taken the view that redemption fine can be imposed even in the absence of the goods as the goods were released to the appellant on an application made by it and on the appellant executing a bond. Since the goods were released on a bond the position is as if the goods were available.* The ratio of the above decision cannot be understood that in all cases the goods were permitted to be cleared initially and later proceedings were taken for under-valuation or other irregularity, even then redemption fine could be imposed. We are, therefore, not inclined to accept the contention raised by the appellant on this issue and set aside the redemption fine.
>>
>> 13 The reliance of learned counsel for the revenue upon the provisions of Section 125 of the Act is also misconceived. *Section 125 of the Act is applicable only in those cases which have been cleared by the concerned authorities subject to furnishing undertaking/bond etc.* However, in the present case, admittedly, the goods were cleared by the respondent-authorities without execution of any bond/undertaking by the assessee. Thus, in view of the fact and

> circumstances of the case, we find no error in the impugned orders. No substantial question of law arises for our determination in the present appeal and the same is hereby dismissed." (emphasis supplied.)

10. We have also particularly noted a decision of the Tribunal (cited by the learned advocate) which stands upheld by the Supreme Court. In *Chinku Exports* case, the Tribunal had held the redemption-fine-related issue against the Revenue in para (10) of its order, reproduced below :

> "10. In view of the aforesaid findings and analysis, we are of the considered opinion that none of these charges upheld in the order impugned are in fact sustained by our analysis. In this connection we are also surprised to find that *the redemption fine of Rs. 2.89 lakhs has been imposed when the goods were not available for confiscation, the same having been exported many years ago. Neither was any bond with a security in any format available with the Department to be enforced. In view of this it is clear that the redemption fine imposed was totally outside the purview of legal provisions in this regard.* Therefore, we set aside the order impugned and allow the appeal with consequential relief as per law." (emphasis supplied).

Dismissing the department's Civil Appeal filed against the above order of the Tribunal, the Apex Court ordered vide 2005 (184) E.L.T. A36 (S.C.) as under:

> "*We see no reason to interfere with the impugned order.* The appeal is dismissed." (emphasis supplied)
>
> In the result, the view taken by the Tribunal in *Chinku Exports* case stands affirmed by the Apex Court and consequently the similar view taken by the P & H High Court in *Raja Impex* case is a binding precedent while the contra decision of the Madras High Court in *Venus Enterprises* case ceases to be good law on the point. It may be noted contextually that the dismissal, by the apex Court, of the SLP filed by M/s. Venus Enterprises did not have the effect of enhancing the precedent value of the High Court's decision in that case.

11. It is nobody's case that a binding judicial authority on the question of imposability of fine under Section 125 of the Customs Act in lieu of confiscation of goods not available for confiscation would not be applicable where the similar question arises as to whether a fine could be imposed under Rule 25 of the Central Excise Rules, 2002 (read with Section 34 of the Central Excise Act) in lieu of confiscation of excisable goods not available for confiscation."

There is no case of misdeclaration by appellants. The dispute relates to the interpretation of classification. In the case of SATRON 2020 (371) ELT 565 (Tri.) following has been observed:

> "**5.** It is seen that the impugned order has directed classification of the goods as finished products even though, admittedly, the machines had not been imported in its complete form. Nevertheless, the provisions of Rule 2(a) of General Interpretative Rules for the Schedule in the Customs Tariff Act, 1975 itself deem that the classification of the goods shall be governed by the following principles of which -
>
> > '2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.'

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

Moreover it is seen that the charge of classification under Chapter Tariff Heading 3405 made in the impugned notice does not survive and consequently no demand of duty survives and consequently no demand of duty survives. In these circumstances there is no case for confiscation of goods.

15. The revenue has failed to establish that the goods are not classifiable in Customs Tariff Heading 2712 and are classifiable under Customs Tariff Heading 3405. Consequently, we hold that goods are rightly classifiable under Customs Tariff heading 2712 as a mixture of wax with paraffins. Consequently, demands of duty classifying the goods under CTH 3404 and 3405 cannot be sustained. The penalties imposed, confiscation and imposition of redemption fine also cannot be sustained.

16. All the appeals are consequently allowed.

(order pronounced in the open court on 22.10.2024)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Neha