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

REGIONAL BENCH- COURT NO. 1

**CUSTOMS Appeal No. 10319 of 2023-DB**
(Arising out of OIO No. AHM-CUSTM-000-COM-031-22-23 dated 09.02.2023passed by Commissioner of Customs -AHMEDABAD-I)

**KLJ Resources Limited** **........Appellant**
Flat No. 111, First Floor, P.No. 20, Sector – 9,
Vrindaban Complex, Gandhidham Kutch, Gujarat-370201
Corporate Office at : KLJ House 8A, Shivaji Marg
Majafgarh Road, New Delhi - 110015

*VERSUS*

**C.C., AHMEDABAD** **........Respondent**
CUSTOM HOUSE,
NEAR ALL INDIA RADIO NAVRANGPURA,
AHMEDABAD, GUJARAT

**WITH**

**CUSTOMS Appeal No. 10320 of 2023-DB**
(Arising out of OIO No. AHM-CUSTM-000-COM-031-22-23 dated 09.02.2023passed by Commissioner of Customs -AHMEDABAD-I)

**D N Dadhich** **........Appellant**
General Manager (Imports)
Flat No. 111, First Floor, P.No. 20, Sector – 9,
Vrindaban Complex, Gandhidham Kutch, Gujarat-370201
Corporate Office at : KLJ House 8A, Shivaji Marg
Majafgarh Road, New Delhi - 110015

*VERSUS*

**C.C., AHMEDABAD** **........Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

**APPEARANCE:**
Shri Pramod Kumar Rai with Shri Jayant Kumar, Advocate appeared for the Appellant
Shri Rajesh Nathan, Superintendent (Authorized Representative) for the Respondent

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

**Final Order No. 12503-12504 /2024**

DATE OF HEARING:04.09.2024
DATE OF DECISION:24.10.2024

**RAJU**

This appeal has been filed by M/s KLJ Resources Limited.

2 The appellant had imported Waksol 9-11A Grade from M/s Sasol Chemicals, South Africa. The goods were placed on hold by DRI and samples were drawn from the consignment under punchnama dated 18.07.2019 and 08.08.2019. The appellants filed bill of entry No.

4035406 dated 12.07.2019 and 41273986 dated 29.07.2019. The appellant sought to classify the goods under heading 2710 1990.

2.1 Samples were drawn at Kandla Customs, in respect of bill of entry No. 4035406 and sent to Custom House Laboratory, kandla vide test memo No. 02/2019-20 dated 22.07.2019. The other sample drawn in respect of Bill of Entry No. 4273986 dated 29.07.2019 was forwarded to the Custom Laboratory at Vadodara for testing vide Test Memo No. 02/2019-20 dated 31.12.2019. Both test memos were forwarded with following queries:

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

The Joint Director, Custom House Laboratory, Kandla submitted a test report dated 06.08.2019 in respect of test memo 02/2019-20 dated 22.07.2019. The Joint Director also gave the following opinion:

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

It can be seen that no answer was given to specific queries raise by DRI in the Test Memo No 02/2019-20 dated 22.07.2019 listed above in this paragraph.

2.2 The other sample drawn in respect of Bill of Entry No. 4273986 dated 29.07.2019 was forwarded to the Custom Laboratory at Vadodara for testing vide Test Memo No. 02/2019-20 dated 31.12.2019. In respect of the Test Memo No. 02/2019-20 dated 31.12.2019 forwarded to the laboratory at Vadodara, following report was submitted:

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

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

In view of above, classification of product may be decided at your end."

It can be seen that no answer was given to most of the specific queries raised by DRI in the test memo listed above in this paragraph.

2.3 On the request of the appellants for retest of samples, representative sample drawn were sent to CRCL, New Delhi with following queries:

(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 dropping point of product.
(vi) What is viscosity of product measured by rotational viscometer at a temperature of 10 degree Celsius above dropping point.
(vii) Whether at 20 deg centigrade, the product is transparent or translucent.
(viii) Whether the product if soft or brittle at 20 degree Centigrade.
(ix) Whether the product can be drawn into threads above its melting point.
(x) Whether the product takes a polish when gently rubbed.
(xi) Whether the product 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 or other woodworks or coachwork, scouring 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.

The reply received from Joint Director, CRCL, New Delhi and the comments on the same by the appellant are summarized as follows:

| Query/point raised by this office | CRCL Lab Reply | Observationof appellant |
|---|---|---|
| (i) What is the composition of Product. | (i) The sample is composed of Paraffin was with n paraffin | The product is having paraffins (Oil) contents 38.72% and Paraffin Wax Contents 61.28%. Thus, product is mixture of paraffinic hydrocarbon. |
| (ii) Whether the product obtained by the Industrial Treatment of fats, oils or waxes. | (ii) No comment | Not given any comment |

| | | |
|---|---|---|
| (iii) Oil Content (% by weight) | (iii) N paraffin content (oil) is 38.72% by Gas chromatography analysis | Thus, product is mixture of hydrocarbon having % n-paraffins below C18 (by GC) (wax) as 61.28% |
| (iv) Whether the product is mixture of separate chemical compounds. point of product. | (iv) The sample is a mixture / preparation of paraffin wax and n-Paraffin | The product is a mixture of n-Paraffin Wax with n-Paraffins having different molecular weight |
| (v) What is dropping point of product. | (v) Not applicable | --- |
| (vi) What is viscosity of product measured by rotational viscometer at a temperature of 10 degree Celsius above dropping point. | (vi) Not applicable | --- |
| (vii) Whether at 20 deg centigrade, the product is transparent or translucent. | (vii) The sample is hazy at 20 degree Celcius | --- |
| (viii) Whether the product if soft or brittle at 20 degree Centigrade. | (viii) The product is soft mass at 20 degree Celcius | --- |
| (ix) Whether the product can be drawn into threads above its melting point. | (ix) No it cannot be drawn into threads | --- |
| (x) Whether the product takes a polish when gently rubbed. | (x) No, it is in liquid form | No clear opinion given whether product takes a polish when gently rubbed. |
| (xi) Whether the product having waxy character. | (xi) The product is oily liquid | --- |
| (xii) Usage of product; whether the product can be used in polishes, creams and similar preparations for footwear or leather, or maintenance of wooden furniture, floors or other woodworks or coachwork, scouring pastes and powders and other scouring preparations? | (xii) May be ascertained at your end. | --- |
| (xiii) Any other important information about the product. | (xiii) The details are mentioned above | --- |
| (xiv) Technical opinion of laboratory regarding appropriate classification of the product under | (xiii) The details are mentioned above. | Not given any opinion, regarding appropriate classification of the product |

| | | |
|---|---|---|
| Customs tariff. | | |

It is seen that many of the tests suggested by the revenue could not be conducted by the CRCL which in any case it could not have given under Chapter Tariff Heading. It also did not give any opinion on the classification of goods. The CRCL also failed to conduct the necessary tests suggested by the DRI for the purpose of classification.

2.4 In so far as classification under CTH 2710 is concerned the report of CRCL is conclusive. On the basis of above report, revenue reached a conclusion that the goods are not classifiable under heading 2710 as the mineral oil content was less than 70%.As per CRCL report, the oil content was 38.72% by mass. The product was described as "The sample is a mixture / preparation of paraffin wax and n-Paraffin". As per CRCL report, the oil content was 38.72% by mass. Thus the composition was 38.72% oil with balance wax (61.28%). As per the CRCL report in respect of query no (x), "Whether the product takes a polish when gently rubbed" the answer was "No, it is in liquid form".Thus there was nothing in the report to suggest classification under CTH 3405.Being a mixture of wax and oil it was specifically covered under the heading 2712

3. It is noticed that facts in the instant case are almost identical to the facts in the case of <u>Panoli Intermediates India Private Limited and others vide Final Order No. 12426-12460/2024 dated 22.10.2024.</u> In the instant case also the results of testing by the revenue laboratories are similar to that in aforesaid case. In the case of Panoli Intermediates India Private Limited (supra)following order has been passed.

> "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. **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."

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

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

**<u>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</u>**

**<u>iii)</u> 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.

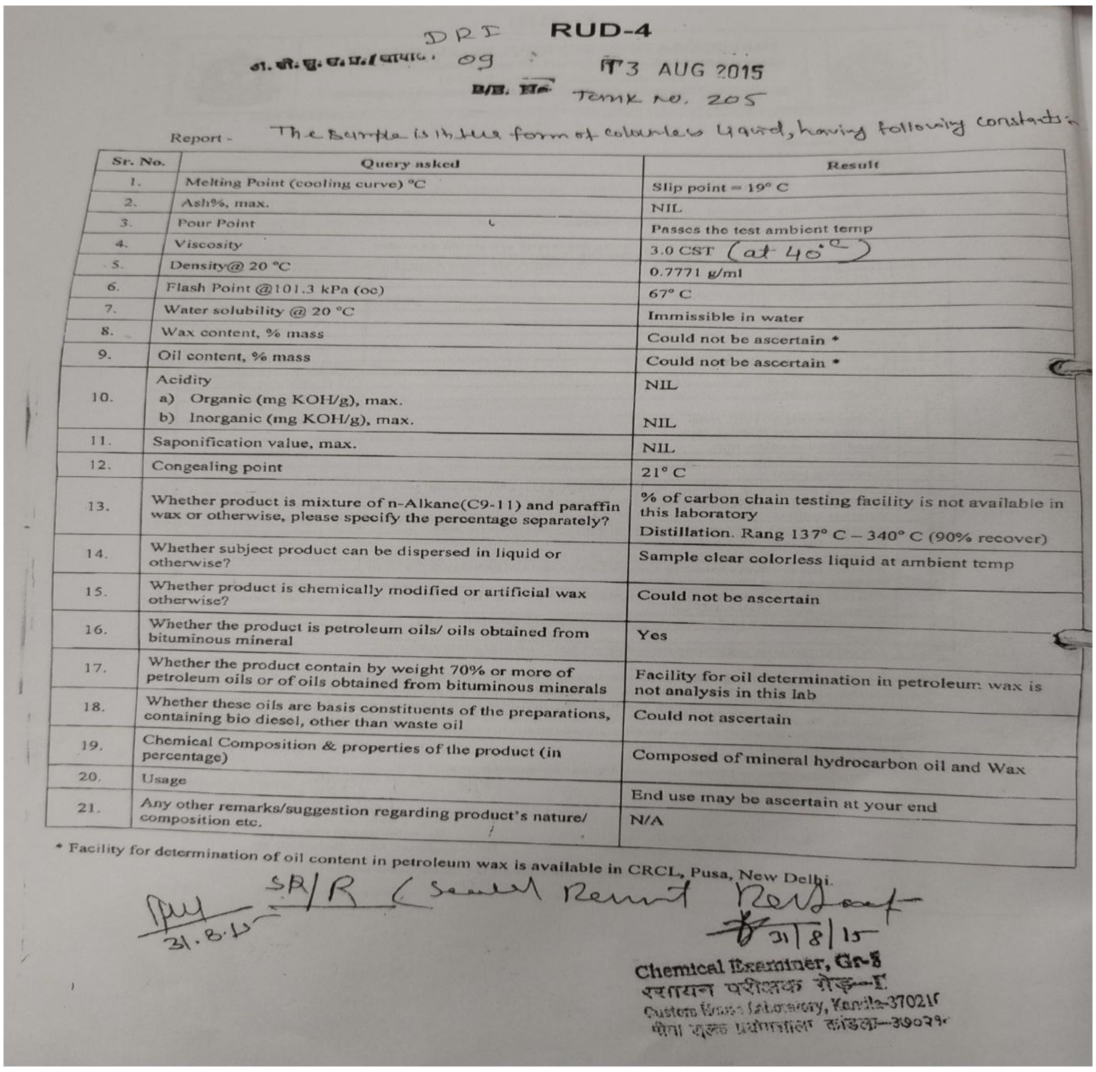
5.1 The goods imported by M/s PIIPL were stored in two tanks i.e. tank No. IMC 205 and IMC 113. Samples were drawn from these two storage tanks. At the material time the tank No. IMC 205 contained 709.556 MT of Waksol 9-11A and tank No. IMC 113 contained a co-mingled of N-paraffin 616.037 MT and Waksol 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 identified for 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:



DRI RUD-4

डा. सी. यू. ए. प्र./आयात : 09 : दि 3 AUG 2015

डा/ब. हैं Tank No. 205

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

| 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 | Immissible in water |
| 8. | Wax content, % mass | Could not be ascertain * |
| 9. | Oil content, % mass | Could not be ascertain * |
| 10. | Acidity<br>a) Organic (mg KOH/g), max.<br>b) Inorganic (mg KOH/g), max. | NIL<br><br>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<br>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

रसायन परीक्षक ग्रेड-I

Custom House Laboratory, Kandla-370210

सीमा शुल्क प्रयोगशाला कांडला-370210

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**<br><br>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, | Could not ascertain |

| | | |
|---|---|---|
| | containing bio diesel, other than waste oil | |
| 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>

5.3Thereafter 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-mingled 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."*

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**.**

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.

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

| 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 |

following

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 analyze 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/Delhi should 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<br><br>(Under Ministry of Science & Technology) CSIR-CIMFR, Barwa Road, Dhanbad 826015, Jharkhand, India Tel: 91-326-2296004/5/6.<br><br>Email: director@cimf.nic.in/dcmrips@yahoo.co.in |
| | | 20. Steam | Central Mine Planning & Design Institute Limited, Ranchi<br><br>(Under Ministry of Coal) (A Subsidiary of |

| | | | |
|---|---|---|---|
| | | Coal | 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<br><br>(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<br><br>(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<br><br>Same as above |
| | | 25. Diesel Oil | Same as above |
| | | 26. **Waksol 9-11 A Grade** | Central Pollution Control Laboratories (CPCB) |
| | | 27. Thinner Off Spec | (Under Ministry of Environment) Ministry of Environment, Forest & Climate Change, Government of India, Parivesh Bhavan, CBD-cum-office complex East Arjun Nagar, Delhi 110032 India, Tel: 91-11-22307078 |

| | | | |
|---|---|---|---|
| | | 28. Waste Oil/Sludge Oil/ Sludge Water/ Bilge Water/ Stop Water/ Furnace Oil | 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<br>13. Steam Coal<br>14. Solvent C-9<br>15.C-9-C-11<br>Liquid Paraffin<br>16.C-14-C-20 N Paraffins<br>17.Petroleum Bitumen 60/70<br>18. Diesel Oil<br>19. **Waksol 9-11 A Grade**<br>20. Thinner Off Spec<br>21. Waste Oil/Sludge Oil/ Sludge Water/ Bilge Water/ Stop Water/ Furnace Oil | 1.NTPC Energy Technology Research Alliance (NETRA), NTPC Ltd.<br>Address: Plot No. E-3 Ecotech-II, GreaterNoida, Gautam Buddha Nagar, Pin-201308, Uttar Pradesh<br>2. Central Coal Testing & Research Laboratory, Western Coalfields Limited Address Nara Nari, Road, kalpananagar, P.O. Uppalwadi Nagpur, Pin-440 026, Maharashtra<br>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 "Montan pitch" 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, consisting of:*

> *(i) Waxes of this heading mixed with animal waxes (including spermaceti), vegetable waxes or artificial waxes.*
> *(ii) **Waxes of this heading mixed with fats, resins, mineral substances or other materials, provided they have a waxy character**."*

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 blending)<br>Bidvest Tank Terminals Bay 3 TK634 |

| | | | |
|---|---|---|---|
| Sampling Method | ASTM E300 | Sample Number | 11/15/0655 |
| Date Sampled | 13 November 2015 | Time Sampled | 03:00 |
| Date Tested | 13 November 2015 | Time Tested | 12:00 |
| Batch Number | | Order Number | |
| Weather Condition | | | |
| Intertek Job No. | DBN093671/2015 | Client Ref. No. | |

| TEST DESCRIPTION | METHOD | SPECIFICATION | RESULT |
|---|---|---|---|
| Appearance | ASTM D4176 | Bright and Clear | PASSES |
| Colour(saybolt) | *ASTM D156 | + 15 min | +25 |
| Density @ 20°C kg/l | *ASTM D4052 | Report | 0.7786 |
| Density @ 35°C kg/l | *ASTM D4052 | Report | 0.7681 |
| Flash Point (closedcup) °C | *ASTM D93 | 48 Min | 59.0 |
| **CARBON DISTRIBUTION:** | | | |
| C08 and Lighter mass % | GC | Report | 0.6 |
| C12 - C20 mass % | GC | Report | 47.0 |
| C21 - C30 mass % | GC | Report | 33.0 |
| C9 - C11 mass % | GC | Report | 19.4 |

Key: * SANAS ACCREDITED TEST + REFERENCE METHOD

Krishan
KRISHAN KUMAR
19-1-2016

Technical Signatory

No part of this document may be reproduced except in full, without the written approval of INTERTEK
Our standard terms and conditions of business shall apply
The results relate to the sample tested and the most recent methods available with a 95% confidence level

Intertek Testing Services (South Africa) (Pty) Ltd

Reg No. 1971/002229/0:

Durban, Island View Laboratory
Corner Abadan and Sumatra Roads
Island View, Bluff
Tel +27 31 466 3344
Fax +27 31 466 1110 / 5410
Website www.intertek.com
E-mail ops.CBEdurban@intertek.com

P O Box 21062
Bluff, 4036

Responsible Care

ilac-MRA sanas T0056

Refer to our Standard Terms and Conditions of Business, available upon request.
Directors: M C Riby-Smith, D R Kunene, D P Ruddin

DIN No. 20210271ML0000612455

sasol reaching new frontiers

## product data sheet

### WAKSOL 9-11

Code 1450 Revision 3 9 October 2012

| Properties | Test method | Units | Specification | Typical values |
|---|---|---|---|---|
| Flashpoint (Closed cup) | ASTM D 93 | °C | 48 min | 49 |
| Appearance | ASTM D 4176 | - | Bright and clear | Pass |
| Colour | ASTM D156 | Saybolt | + 15 min | 24 |
| Carbon Distribution: | Sasol 5047 | mass % | | |
| C8 and lighter | | | - | 0.7 |
| C9-C11 | | | - | 19.7 |
| C12-C20 | | | - | 52.3 |
| C21-C30 | | | - | 27.3 |
| Density @ 20°C | ASTM D 4052 | Kg/l | - | 0.7783 |
| Density @ 35°C | ASTM D 4052 | Kg/l | - | 0.7689 |

**Packaging**
WAKSOL 9-11 is available in liquid in bulk

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

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

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

Krishan
KRISHAN KUMAR
19.1.2016

DIN No. 20210271ML0000612455

*product data sheet*

**Sasolwax Waksol A**

Code 1520 Revision 8 18 April 2013

| Properties | Test method | Units | Specification | Typical values |
|---|---|---|---|---|
| Appearance | Sasol 1074 | - | Free from foreign material | Pass |
| Cloud point | ASTM D5551 | °C | 48 max | 30 |
| Colour | Sasol 2000 | Saybolt | + 15 min | + 24 |
| Congealing point | ASTM D 938 | °C | 26 - 32 | 30 |
| Flash point at 101.3 kPa | ASTM D93 | °C | 120 min | 150 |
| Oil Content | ASTM D721 | mass % | 22 max | 14 |

**Packaging**
Sasolwax WAKSOL A is supplied in 153kg open top steel drums

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

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

Sasol Wax (South Africa) a division of Sasol Chemical Industries Limited
ISO 9001/ISO 14001

Krishan
KRISHAN KUMAR
19.1.2016

Product Data Sheet for the product Waksol A

DIN No. 20210271ML0000612455

sasol
reaching new frontiers

*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 153kg open top steel drums.

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

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

Sasol Chemicals a division of Sasol South Africa (Pty) Ltd.
ISO 9001/ISO 14001

8.1Revenue 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 mixture |

**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 which viscosity is 50 mPa.s** | (˚C) | = | 25 | | |
| **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 |

8.2The 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.

8.3The 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.

8.4The 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**.** Again Fisher 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. **<u>There is absolutely no mention of any exclusion from the heading 2712 going to the Chapter Tariff Heading 3405.</u>** 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, <u>as defined in Note 5 to this Chapter,</u> 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. **<u>Waxes of heading 27.12, produced synthetically or otherwise (e.g. Fischer Tropsch waxes consisting essentially of hydrocarbons) are, however, excluded.</u>** Water-soluble waxy products having surface-active properties are also excluded (heading 34.02).

(B) ……………….

(C) ………………."

<u>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).</u> 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:

"Paraffin wax 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 wax containing 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

***"Sasolwax Waksol Ais fischer-tropsch unmicronized wax by Sasol. It has straight chain of hydrocarbons, high melting point, low viscosity and excellent harness. Sasolwax Waksol 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 Tropsch Unmicronized Wax**'. The page also shows as physical form as powder not liquid. The comparison between 'Sasolwax Waksol 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<br>(ii) Whether the product obtained by the Industrial Treatment of fats, oils or waxes<br>(iii) Oil content (%by weight)<br>(iv) Whether the product is mixture of separate chemical compounds |

| | |
|---|---|
| | (v) What is the dropping point of product<br>(vi) What is viscosity of product measured by rotational viscometer at a temperature of 10 degree Celcius above dropping point<br>(vii) Whether at 20 deg centigrade the product is transparent of translucent<br>(viii) Whether the product if soft or brittle at 20 degree Centigrade<br>(ix) Whether the product can be drawn into threads above melting point<br>(x) Whether the product takes a polish when gently rubbed<br>(xi) Whether the product having waxy character<br>(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?<br>(xiii) Any other important information about the product<br>(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 characteristics | | |
| | IBP | 164˚C | |
| | 5% recovery | 171˚C | |
| | 30% recovery | 320˚C | |
| | 90% recovery | 357˚C | |
| | 92% recovery | 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."

4 It is seen that the above decision in case of Panoli Intermediates India Limited relates to classification of practically an identical product, namely, a mixture of Waksol A with Oil (paraffins less than C 18 with oil not exceeding 70%). From the above decision it is seen that

(i) The revenue labs were not equipped to test these goods

(ii) The Joint Director of the Revenue Laboratories is not competent to give opinion on classification.

(iii) The goods are specifically classifiable under CTH 2912 9040

(iv) The revenue circular No No.43/2017-Cus dated 16.11.2017 and Circular No. 11/2018-Cus dated 17.05.2018 also place the Waksol A under Chapter 27 and not under Chapter 35.

(v) There is clear evidence of use of goods as an input for manufacture of Chlorinated Paraffin wax

(vi) The 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

(vii) There is no evidence brought out in support of the argument that the goods are used as Polish or are Often sold in retail.

(viii) The retest report, which was examined in earlier order as well, specifically states in reply to query

*(x) Whether the product takes a polish when gently rubbed*

The reply of the Laboratory is

"No, it is in liquid form".

5 We find that extensive discussion has been made in the case of Panoli Intermediates India Limited covering the points raised in the instant case. We find that all aspects of the classification have been examined in aforesaid order. Relying on the decision in the case of Panoli Intermediates India Private Limited, we hold that the goods are rightly classifiable under Chapter heading 2712 9040 as a mixture of Waksol A along with approximately 38.72% paraffin (below C-18) in terms of the report of Joint Director dated 24.07.2020.

6 In view of above relying on the decision in case of Panoli Intermediate vide Final Order dated 22.10.2024, the appeals are allowed.

(Pronounced in the open court on 24.10.2024)

**(RAJU)**
**MEMBER (TECHNICAL)**

**(SOMESH ARORA)**
**MEMBER (JUDICIAL)**

Neha