

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 2

Central Excise Appeal No. 20715 of 2016

Central Excise Miscellaneous Application No. 20377 of 2025

[Arising out of Order-in-Original No. BLR-EXCUS-001-PRCOM-MVK-28-15-16
dated 08.01.2016 passed by the Principal Commissioner of Central Excise,
Bangalore – I Commissionerate]

M/s. Vasudha Colours Pvt. Ltd.

No. 26-H, Veerasandra Industrial Area,
Hosur Road, Electronic City Post
Bangalore – 560 100

.....**Appellant(s)**

VERSUS

**Principal Commissioner of Central Excise
Bangalore - I Commissionerate**

P.B. No. 5400, C.R. Building
Queens Road
Bangalore – 560 001

.....**Respondent(s)**

WITH

**(i) Central Excise Appeal No. 20712 of 2016 [M/s. 3M India Ltd.
Vs. Principal Commissioner of Central Excise, Bangalore – I
Commissionerate]**

[Arising out of Order-in-Original No. BLR-EXCUS-001-PRCOM-MVK-28-15-16
dated 08.01.2016 passed by the Principal Commissioner of Central Excise,
Bangalore – I Commissionerate]

**(ii) Central Excise Appeal No. 20713 of 2016 [Shri Sameer
Agarwal, Chief Financial Officer, M/s. 3M India Ltd. Vs. Principal
Commissioner of Central Excise, Bangalore - I Commissionerate]**

[Arising out of Order-in-Original No. BLR-EXCUS-001-PRCOM-MVK-28-15-16
dated 08.01.2016 passed by the Principal Commissioner of Central Excise,
Bangalore – I Commissionerate]

**(iii) Central Excise Appeal No. 20714 of 2016 [Shri D.K. Suresh,
Manager (Taxation), M/s. 3M India Ltd. Vs. Principal
Commissioner of Central Excise, Bangalore - I Commissionerate]**

[Arising out of Order-in-Original No. BLR-EXCUS-001-PRCOM-MVK-28-15-16
dated 08.01.2016 passed by the Principal Commissioner of Central Excise,
Bangalore – I Commissionerate]

**(iv) Central Excise Appeal No. 20716 of 2016 [Shri P.S. Sumanth,
Director, M/s. Vasudha Colours Pvt. Ltd.]**

[Arising out of Order-in-Original No. BLR-EXCUS-001-PRCOM-MVK-28-15-16
dated 08.01.2016 passed by the Principal Commissioner of Central Excise,
Bangalore – I Commissionerate]

(v) Central Excise Additional Evidence No. 20379 of 2025 in Central Excise Appeal No. 20453 of 2017 [M/s. Vasudha Colours Pvt. Ltd. Vs. Commissioner of Central Excise, Bangalore - I Commissionerate]

[Arising out of Order-in-Original No. BLR-EXCUS-001-PRCOM-MVK-26 & 27-15-16 dated 16.12.2016 passed by the Principal Commissioner of Central Excise, Bangalore – I Commissionerate]

(vi) Central Excise Additional Evidence No. 20381 of 2025 in Central Excise Appeal No. 20456 of 2017 [M/s. Vasudha Colours Pvt. Ltd. Vs. Commissioner of Central Excise, Bangalore - I Commissionerate]

[Arising out of Order-in-Original No. BLR-EXCUS-001-PRCOM-MVK-26 & 27-15-16 dated 16.12.2016 passed by the Principal Commissioner of Central Excise, Bangalore – I Commissionerate]

(vii) Central Excise Additional Evidence No. 20380 of 2025 in Central Excise Appeal No. 20846 of 2019 [M/s. Vasudha Colours Pvt. Ltd. Vs. Commissioner of Central Tax, Bangalore - South Commissionerate]

[Arising out of Order-in-Appeal No. 172/2019 dated 03.06.2019 passed by the Commissioner of Central Tax (Appeals-I), Bangalore]

APPEARANCE:

Mr. Ravi Raghavan, Advocate with Mr. Md. Ibrahim and Mr. Tushar Sharma,
Advocates for the Appellants
Mr. Rajashekar B.N.N., Superintendent (AR) for the Respondent

CORAM:

Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

FINAL ORDER NOS. 22283-22290 /2025

Date of Hearing: 08.10.2025
Date of Decision: 08.10.2025

Per: Pullela Nageswara Rao

The issues in the present appeals are:

- a. whether activities of packing /repacking of the products received from M/s. 3M in '200 litre barrel containers' into 'retail packs' and affixing labels printed with all the relevant details, carried out by the Appellants amounts to manufacture in terms of the Chapter notes of the Central

Excise Tariff Act, 1985 read with Section 2f(ii) of the Central Excise Act, 1944;

- b. whether the classification of 'additives' and 'flushes' by the department under Central Excise Tariff Heading (CETH) 3403 as against CETH 3811 of the Central Excise Tariff Act, 1985 claimed by the appellant and valuation of goods based on maximum retail price (MRP) minus abatement in terms of Notification No.49/2008-CE (NT) is tenable; and
- c. whether the imposition of personal penalties under Rule 26 of Central Excise Rules, 2002 are tenable.

2. The brief facts are the Appellant is a private limited company engaged in the manufacture of various types of 'adhesives' and 'binders' classified under Central Excise Tariff Headings (CETH) 39051290; 39061090; 39061010; 35069190 on which they have discharged excise duty and are registered with the Central Excise Department. In addition, the Appellants are also carrying out mixing, processing, packing, repacking and labelling of certain products on job work basis for M/s. 3M India Ltd., Bangalore. Further for certain line of products, the Appellants are paying service tax on the job work charges received by them from M/s. 3M and are regularly filing ST-3 returns. The Appellants have entered into a Product Processing Agreement dated 01.04.2012 with M/s. 3M for mixing and packing of various chemicals used in 'car care products' and 'fabric protectors' as per the Bill of Materials (BOM) issued by M/s. 3M. In terms of the above Agreement, the Appellants have received raw materials including the packing material and labels from M/s. 3M through stock transfer notes. In the present case, the Appellants have not procured any raw materials from any other source and have received the raw materials only from M/s. 3M. The Appellant carries out packing of the impugned products i.e., Diesel / Petrol Fuel Tank Additive, Transmission Oil Flush, Engine Oil Additive etc., received by them from M/s. 3M in '200 litre barrel containers' into 'retail packs' (ranging from 25ml to 250 ml) and thereafter, affixes labels on such packs. M/s. 3M have also issued Purchase orders on a monthly basis on the Appellants.

An investigation was conducted in the factory premises of the Appellants on 24.11.2014 by the officers of the Directorate General of Central Excise Intelligence, Bangalore Zonal Unit (DGCEI).

3. The Appellants for the period 01.05.2010 to 23.11.2014 have followed 2(two) types of clearances to M/s. 3M under the terms of the Agreement, a) under Labour Bills (LB) and b) under Labour Bills with Service Tax (LBST). The two type of clearances adopted by the Appellants are summarised as follows:

Particulars	LB	LBST
Receipt of raw materials by the Appellants	From M/s. 3M	From M/s. 3M
Processes undertaken by the Appellants	Labelling, packing	Labelling, packing
Nature of Job Work-Labour Charges bills	IA products	IE products
Service tax whether paid by the Appellants on the processing charges received from M/s. 3M	No	Yes
Excise duty whether paid by Appellants at the time of clearance of goods to M/s. 3M	No	No
Excise duty whether paid by M/s 3M at the time of clearance to their customers	Yes	No
Warehouse of M/s. 3M where goods received from the Appellants	BB warehouse	BG warehouse
Availment of credit on raw material supplied by M/s. 3M to Appellants	Availed by M/s. 3M	Not availed by M/s. 3M

Demand whether proposed in the instant case	No	Yes
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4. The dispute in Appeal Nos. E/20712-20716/2016 for the period 01.05.2010 to 23.11.2014 relates only to the following IE-coded products cleared by the Appellants to M/s. 3M.

Sl. No.	Product
1	Petrol fuel tank additive
2	Diesel fuel tank additive
3	Engine oil additive
4	Transmission oil additive
5	Radiator additive
6	Engine oil saver
7	Engine oil plus
8	Engine oil flush
9	Transmission oil flush
10	Engine crank case flush
11	Radiator Flush

5. The Ld. Principal Commissioner vide impugned Order-in-Original No.BLR-EXCUS-001-PRCOM-MVK-28-2015-16 dated 08.01.201 rejecting all the submissions made by the Appellants, confirmed the demand along with interest and imposed penalty on the Appellant and personal penalties on co-appellants as proposed in the Show Cause Notice dated 22.05.2015 issued for the period 01.05.2010 to 23.11.2014.

6. The appellant for the period from 25.11.2014 has adopted a different method as detailed below. The appellant with a view to avoid

any further disputes and discharge applicable duties changed their business model and discontinued the manufacture and clearance of 'IE coded' products from 25.11.2014, on job work basis to M/s 3M. The Product Processing Agreement dated 17.07.2012 was replaced with the Product Processing Agreement dated 22.06.2015. Thus, the Appellant purchased goods from vendors approved by M/s. 3M on payment of VAT, packed goods on their own account under the 'IS code' and sold the 'IS coded' goods to M/s. 3M on payment of excise duty and VAT. Thus from 25.11.2014 the Appellant cleared goods to M/s. 3M on sale basis under 'IS code'. However, during the transition period 3(three) 'IE coded' invoices were raised on payment of excise duty.

7. The salient features of the new 'IS coded' clearance to M/s. 3M are summarized as follows:

Particulars	IS Code (Earlier IE coded Products under the LBST Model)
Receipt of raw materials by the Appellant	From approved vendors of M/s 3M
Processes undertaken by the Appellant	Labelling, packing
Excise duty whether paid by Appellant at the time of clearance of goods to M/s. 3M	yes
VAT whether paid by Appellant at the time of clearance of goods to M/s. 3M	yes
Excise duty whether paid by M/s. 3M at the time of clearance to their customers	No
Warehouse of M/s. 3M where goods received from the Appellant	BG warehouse

Availment of credit on raw material supplied by vendors to Appellant	Availed by the Appellant
Demand whether proposed in the instant case	Yes

8. The Appellant from 25.11.2014, placed purchase order on the approved vendors of M/s. 3M for purchase of raw materials and packing materials. The raw materials in 200 litre barrel containers and packing materials were supplied to the Appellant under the cover of sale invoices charging CST/ VAT as applicable. The Appellant availed credit of the duty paid on the raw materials procured by them. M/s. 3M issued Purchase orders on a monthly basis to the Appellant for purchase of finished goods wherein the quantity, description and value of the finished goods were mentioned. The Appellant undertook activities of packing and labelling and the finished goods so repacked were sold to M/s. 3M on payment on excise duty on the sale price. The Appellant has classified the goods under Central Excise Tariff Heading (CETH) 3811 9000 of the Central Excise Tariff Act, 1985 as per the classification followed by the supplier in his invoice. The Appellant also discharged VAT on the goods sold to M/s. 3M. The goods were shipped to the BG warehouse of M/s. 3M.

9. In view of the above, proceedings were initiated by the Department and show cause notices (SCNs) were issued for different periods, alleging that the activity carried out by the appellant amounts to manufacture, and that the appellant failed to pay excise duty on the goods manufactured by them, further proposing to reject the classification of the impugned goods and proposed to demand the differential duty along with interest and penalty by re-classifying the same under Chapter Heading 3403 99 00 of the Central Excise Tariff Act, 1985; and that the goods falling under Chapter 3403 of the Central Excise Tariff are specified under Notification No. 49/2008-CE (NT) dated 24.12.2008 for MRP based assessment. Thereafter, adjudication authority/s as per the impugned orders confirmed the demands along with interest and also imposed penalties. In addition to that, penalties were also imposed on the co-

noticees. Aggrieved by said orders, appeals by the Appellant-M/s. Vasudha Colours and the co-noticees are filed before this Tribunal. The appellant also filed a Miscellaneous Application and 3(three) Additional Evidences.

10. Since the issues involved in all the 8(eight) appeals are common, the appeals are taken up for hearing together and are disposed by this order. The details of the appeals are appended below:

Appeal No.	Main Appeal E/20715/2016 Personal penalty Appeal Nos. E/20712- 20714/2016 and E/20716/2016	E/20453/ 2017	E/20456/ 2017	E/20846/ 2019
Period of Dispute	01.05.2010 to 23.11.2014	25.11.2014 to June, 2015	July, 2015 to December, 2015	January,2016 to December,2016
Date of issuance of SCN/SOD	22.05.2015	08.02.2016	26.07.2016	26.04.2017
Order-in-Original No. & date	BLR-EXCUS-001- PRCOM-MVK-28-2015- 16 dated 08.01.2016	BLR-EXCUS-001-PRCOM-MVK-26 & 27/2015-16 dated 16.12.2015		BLR- South/JC/2018 dated 27.03.2018
Order-in-Appeal No. & date	-	-		172/2019 dated 03.06.32018
Duty demanded (in Rs.)	14,10,22,381	2,48,61,906	2,32,83,695	1,26,42,356
Duty paid and appropriated in Order-in-Original (in Rs.)	90,81,614	41,30,250	34,34,462	18,89,916
Demand barred by limitation (in Rs.)	11,59,13,521	-	-	
Penalties imposed (in Rs.)	14,10,22,381/- u/s. 11AC(1) of the Central Excise Act r/w Rule 25 of the Central Excise Rules, 2002	2,48,61,906	2,32,83,695	10,74,250

Personal penalties	i) Rs.7,05,11,191/- on M/s. 3M India Ltd. ii) Rs.25,00,000/- on Shri P.S. Sumanth, Director of M/s. Vasudha Colours Pvt. Ltd. iii) Rs. 5,00,000/- on Shri Samir Agarwal, CFO of M/s. 3M India Ltd. iv) Rs. 1,00,000/- on Shri D.K. Suresh, Manager (Taxation) of M/s. 3M India Ltd.	-	-	
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11. The learned counsel for the appellant during the hearing submits that the activity undertaken by the appellant does not amount to manufacture. Section 2(f) of the Central Excise Act, 1944 defines manufacture. In terms of Section 2(f)(ii), manufacture includes any process which is specified in relation to any goods in the Section Notes or Chapter Notes of the First Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture. Chapter Note 6 to Chapter 34 and Chapter Note 9/10 to Chapter 38 provides that in relation to products of the concerned Chapter, *labelling or relabelling of containers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer shall amount to manufacture.*

12. The learned counsel submitted that it is pertinent to note that the Chapter Note 6 to Chapter 34 and Chapter Note 9/10 to Chapter 38 are *pari materia*. The Chapter Notes extend the definition of manufacture and artificially brings into the tax net, certain products or activities which would have not come under the definition of manufacture in terms of Section 2(f)(i), and thus would not have been leviable to excise duty. Such extension of levy beyond originally contemplated under the normative meaning of manufacture should be strictly interpreted. In this regard, reliance is placed on the decision of Hon'ble Supreme Court in the

case of Union of India & Others Vs. Bombay Tyre International Limited- 1983 (14) ELT 1896 (SC) and Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar - 2018 (361) ELT 577 (SC).

13. The learned counsel submitted that as the impugned goods are held classifiable under CETH 3403, by holding that the processes undertaken amount to manufacture in terms of section 2(f)(ii), reference is made to Note 6 to Chapter 34 which reads as follows:

"In relation to products of this Chapter, labelling or relabelling of containers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer shall amount to manufacture".

14. The learned counsel submitted that for the activities undertaken by the job worker (the Appellant) to amount to manufacture under Note 6 to Chapter 34, any of the following activities needs to be undertaken:

- a. labelling or relabelling of containers; or*
- b. repacking from bulk packs to retail packs; or*
- c. adoption of any other treatment to render the goods marketable to the consumer*

15. The learned counsel submitted that in present case, the Appellant receives the products from M/s. 3M in 200 litre barrels containers. The Appellant does not undertake labelling or relabelling of the containers, in which the raw materials are received. Therefore, the activities undertaken by the Appellant does not fall within the first limb of Note 6. Further, the activity undertaken by the Appellant does not amount to repacking from bulk packs to retail packs, the products in liquid form are transported in 200 litre barrel containers to the Appellant's premises. The Appellant upon receiving the products undertakes the activity of packing such products from 200 litre barrel containers to retail packs. The activity of the Appellant is repacking from 'barrel containers to retail packs' and not from 'bulk packs to retail packs'.

16. The learned counsel submitted that Chapter Note has consciously used distinct expressions viz 'containers' and 'bulk packs'. The activity of repacking from barrel containers which are distinct from bulk packs to retail packs does not amount to manufacture in terms of Chapter Note. The products are packed in retail packs and labelled and thereafter supplied to M/s. 3M. Thus, the products supplied by M/s. 3M to the Appellant are supplied in 'barrel containers' and not in 'bulk packs'. In this regard, the Appellant placed reliance on the decision of the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Vadodara Vs. Vadilal Gases Ltd. - 2017 (346) E.L.T. 161 (S.C.) wherein the Hon'ble Apex Court held that the gases coming in tankers cannot be treated to have come in bulk packs.

17. The learned counsel submitted that in the case of Swastik Corporation Vs. Commr. of Central Excise, Puducherry-2018 (359) E.L.T. 233 (Tri. Chennai), the Hon'ble Tribunal, Chennai, after relying upon the Board's Circular dated 16.12.2009, has held that 'tankers' cannot be terms as 'bulk packs' and the activity of transferring acetic acid from tankers to carbuoys does not amount to manufacture under Note 11 of Chapter 29.

18. The learned counsel for the Appellant also places reliance on the following decisions wherein it was held that gases supplied in tankers are not bulk packs and therefore, the activity of repacking from tankers to retail packs does not amount to manufacture:

- a. Goyal Gases (P) Ltd. Vs. CCE Meerut - 2000 (115) ELT 467 Affirmed by the Supreme Court in 2000 (119) ELT 5 (SC)
- b. Ammonia Supply Co. Vs. Commissioner-2001 (131) ELT 626 (Tribunal)
- c. Dhampur Alco-Chem Ltd. Vs. Commissioner of C. Ex., Ghaziabad - 2017 (357) E.L.T. 627 (Tri. - All.)

19. The learned counsel further submitted that Chapter Note 6 refers to the expression "containers" and "bulk pack" which further substantiates that the Legislature has chosen these expressions

consciously to have different implications. In this regard, reliance is placed on the decision rendered in the case of Union of India Vs. Kumho Petrochemicals Company Limited reported in -[2017 (351) ELT 65 (SC)] wherein it was held that the Legislature has consciously used certain expressions at different places and therefore, it must be presumed that such different expressions were consciously chosen by the Legislature to have different implications. Thus, it is submitted that the expression "Containers" and "Bulk packs" are distinct from each other and the activity of repacking from 'barrel containers' to retail packs would not amount to repacking from 'bulk packs' to 'retail packs'.

20. The learned counsel with respect to third limb, i.e., the activity of adopting any treatment to render the product marketable to the consumer, the Appellant submits that no such treatment has been undertaken on the products received in barrel containers from M/s. 3M. The only activity undertaken by the Appellant is packing of products into retail packs from barrel containers and thereafter affixing labels on the retail packs. The activity of putting the contents received in barrel containers into retail packs does not amount to adopting any treatment on such products to render the same marketable to the consumer, as the products i.e.. Diesel /Petrol Fuel Tank Additive, Transmission Oil Flush, Engine Oil Additive etc., is already marketable in its original form. Thus, the activity undertaken by the Appellant does not amount to manufacture under the third limb of the Chapter Note as well.

21. The learned counsel submitted that even for the period post 25.11.2014, the Appellant had carried out the same activities, however, only difference is that the Appellant itself procures the impugned goods in 200 litre barrel container from the approved vendors of the M/s. 3M and also the packing material and labels in view of the change in business model vide Agreement dated 22.06.2015. It is further submitted that though the Appellant has paid the duty on the impugned goods for the period post 25.11.2014, the activities carried out by the Appellant does not amount to manufacture in view of the above submission. Hence, the

duty demand on these impugned goods for the period post 25.11.2014 is also not sustainable and liable to be set aside.

22. The learned counsel submits that the issue whether activities undertaken by the appellant amounts to manufacture is settled by decision of this Hon'ble Tribunal. This Hon'ble Tribunal in the case of **M/s. 3M India Ltd & Ors. Vs. CCE, Bangalore-III & Ors. 2023(2) TMI 729 CESTAT Bangalore** whereby similar activity of packing Diesel Engine Conditioner, Fuel System Cleaner and Intake System Cleaner from containers of 200 litre barrel containers into retail packs and labelling on such packs undertaken by one of the Job worker (Indicans) of M/s. 3M India Ltd., was held to be not amounting to manufacture in terms of Note 6 to Chapter 34 of the Central Excise Tariff Act, 1985.

23. The learned counsel submits that the activities undertaken by them does not fall within the contours of the Chapter Note. Hence, the processes undertaken by the Appellant does not amount to manufacture in terms of section 2(f)(ii) read with the Chapter Notes. Consequently, the demands are not legally tenable and the impugned orders are liable to be set aside.

24. The learned counsel submits that the impugned goods are not lubricating preparations classifiable under Chapter Heading 3403. the impugned goods are additives classifiable under Chapter Heading 3811 or alternatively under heading 3402 as cleaning preparations. The impugned Order-in-Original has classified the impugned goods under Central Excise Tariff Heading (CETH) 34039900 as Lubricating preparation and rejected the classification under CETH 3811 90 00 on the basis of nature and application of the impugned goods. The impugned order holds that Lubricating preparations designed to reduce friction between moving parts of machinery, vehicles etc. even if it has anti-rust or anti-corrosion preparation principally consisting of lubricants are classifiable as lubricants under Chapter Heading 3403. The Appellants submits that the impugned products are classifiable under Heading 3811 or alternatively under Heading 3402. In any case, the impugned goods does not merit classification under Heading 3403. While lubricating

preparations of Heading 3403 are covered under 4A Notification for MRP based assessment, products of Heading 3811 as well as liquid cleaners of Heading 3402 are not covered under section 4A Notification. The declaration in the product wrappers and technical write up with respect to the ingredients and functions of the impugned goods clearly shows that they are used for cleaning, restoring and protecting the engine. The impugned goods therefore, merit classification as cleaning preparation under Central Excise Tariff Heading (CETH) 3402.

25. The learned counsel further submitted that neither the labels /wrappers of the impugned goods nor the technical write up provided by the Appellant state that the impugned goods function as lubrication preparations. Since the impugned goods do not constitute lubricating preparations, anti-rust or anti-corrosion preparations, the impugned goods are not classifiable under Central Excise Tariff Heading (CETH) 3403 and are rightly classifiable under Central Excise Tariff Heading (CETH) 3811 as Additives.

26. The learned counsel further submitted that the impugned Order also relies on the HSN under Chapter Heading 3811 which states that "*those lubricating preparations intended to be added in small quantities to motor fuels or lubricants, for example, for reducing wear on engine cylinders are excluded from the said Chapter 38*", the above mentioned HSN note relied on by the department is only for the purpose of clarifying that a lubricating preparation shall be classifiable under Chapter Heading 3403, irrespective of the manner in which the lubricating preparation is utilised, either added in small quantities to a lubricant or to the motor fuel. Therefore, the department has wrongly relied on the HSN note to reject the classification adopted by the Appellant.

27. In this regard, the learned counsel Appellant placed reliance on the decision of the CESTAT in the case of **Iftex Oil & Chemicals Pvt. Ltd. Vs. Commissioner of Customs, Nhava Sheva reported in 2005 (181) E.L.T. 124 (Tri. - Mumbai)** wherein the issue relates to classification of a product, Pennzadd 3114, imported by the assessee under Chapter Heading 3811 19 of the First Schedule of Customs Tariff

Act, 1975 as claimed by the assessee or under Sub-heading 3403.99 of the Tariff as confirmed by the department. The facts of the above decision are identical to the present case where the assessee was classifying the goods as 'additives' under Chapter Heading 3811 whereas the view of the department was that the goods merit classification under Chapter 3403 as a "lubricating oil". For the above purpose, the Department had placed reliance on the same exclusion clause under Explanatory Notes of HSN under Chapter Heading 3811 as extracted under para 27, supra. The Hon'ble Tribunal has however, rejected the submissions of the department and has taken a view that the exclusion clause is not applicable to additives and is for the limited purpose of excluding lubricating oils from Chapter Heading 3811. Without prejudice to the above, the impugned products even if not classifiable under CETH 3811, would be classifiable under CETH 3402 as cleaning preparations as the impugned goods act as a cleaner and may be added with every oil change.

28. The learned counsel submitted that in case the impugned goods are held to be classifiable under Central Excise Tariff Heading (CETH) 3402 then the valuation under Section 4A cannot be adopted since all goods falling under Chapter Heading 3402 are not notified under the MRP Notification and have been notified only w.e.f. 01.03.2016 vide Notification No. 12/2016-CE(NT) dated 01.03.2016. In view of the above, the impugned order confirming the demand by classifying the impugned goods incorrectly under CTH 3403 is liable to be set aside as legally unsustainable.

29. The learned counsel further submitted that the classification of goods cannot be challenged at the recipient's end. In the present case, the Appellants have received the raw materials from M/s. 3M who have in turn purchased the raw materials in bulk from suppliers. At the time of sale of the goods to M/s. 3M, the bulk suppliers have classified the goods (raw materials for the Appellants) under Chapter Sub-Heading 3811. The learned counsel drew our attention to the copies of invoices of raw materials purchased from bulk suppliers classifying the goods Chapter

Sub-Heading 3811. It is a settled position of law that classification of goods cannot be questioned at the recipient's end. In the present case, the department has not disputed the classification of goods under Chapter Heading 3811 at the supplier's end. Therefore, the department cannot now dispute the classification of goods as additives under Chapter Heading 3811 at the recipient (i.e. the Appellants-M/s 3M) end. In this regard, the Appellant placed reliance on the following decisions;

- a. Steel Authority of India Ltd Vs. CCE & Cus, Bhubaneswar - 2022 (382) ELT 10 (SC)
- b. Sarvesh Refractories Pvt Ltd Vs. CCE - 2007 (218) ELT 488 (SC)
- c. CCE, Kolkata-III Vs. Kitchen Appliances India Ltd 2013 (288) ELT 567 (Tri- Kolkata)

30. In view of the above, the learned counsel for Appellant submits that they were duty bound to follow the classification adopted by their supplier's more importantly when such classification was not challenged at the supplier's end. In such a case, the classification cannot be disputed at the Appellant (recipient's) end.

31. The learned counsel submitted that Rule 10A is not applicable in the instant case. The Appellant with effect from 25.11.2014, was clearing the impugned goods on sale basis to M/s. 3M under 'IS code' on payment of appropriate duty. The impugned Order has held that the valuation of goods cleared by the Appellant to M/s. 3M is to be adopted as per Rule 10A of the Valuation Rules since the Appellant is authorised by M/s. 3M to manufacture goods on their behalf and since raw materials were purchased from vendors approved by M/s. 3M only and as such the Appellant is liable to discharge duty on the price at which M/s. 3M has cleared the goods. The valuation under Rule 10A is adopted in case where excisable goods are manufactured by a job-worker on behalf of a principal. The explanation to Rule 10A defined Job-worker as "a person engaged in the manufacture of goods from inputs or goods supplied by the principal or by any other person authorized by the principal". It may be seen from the above that the Rule 10A valuation is only applicable

when the transaction is not on principal-to-principal basis and the raw materials are provided by the principal manufacturer. In the instant case, the transaction was on principal-to-principal basis with effect from 25.11.2014 and the raw materials were purchased by the Appellant itself and M/s. 3M did not provide such raw materials free of cost, neither the same were provided by anyone on behalf of M/s 3M. The Appellant used their own plant and machinery for repacking the impugned goods inasmuch as the same were also not provided by M/s. 3M. The labour employed by the Appellant is also their own. As such there is no control whatsoever by M/s. 3M on the activity undertaken by the Appellant except for the specifications of the products and its quality standards. Further, the Appellant used to clear the impugned goods to M/s. 3M under job-work challans however with effect from 25.11.2014 the impugned goods are cleared under tax invoices after discharging excise duty and VAT.

32. The learned counsel submitted the Appellants have rightly taken credit on the inputs received by them. The impugned Order-in-Original has denied the Cenvat credit availed by the Appellants on the ground that the Appellants have received all the inputs from M/s. 3M under stock transfer notes and M/s. 3M have neither paid nor passed on credit under the said stock transfer notes. It is further alleged that there is no provisions in the Cenvat Credit Rules, 2004 to avail the credit by the manufacturer (Appellant) based on purchase invoices of a third party (M/s 3M). Rule 3 provides for taking of credit of the duty paid on inputs on receipt within the factory. Thus where the person is held to be a manufacturer, credit can be taken on the inputs. Since in the instant case, the impugned Order holds that the Appellant is a manufacturer, therefore the Appellant is entitled to take credit of the excise duty paid on the inputs. The purchase invoices for the inputs have been endorsed by M/s. 3M to the Appellant and the same is a valid document for taking credit as per Rule 9 of the Cenvat Credit Rules, 2004. In this regard the Appellant places reliance on the decision of the Hon'ble Tribunal in the case of Kailash Steels Vs. Commissioner of Central Excise, Meerut 2015 (319) ELT 329 (Tri-Del) wherein it was held that credit cannot be denied

merely on the ground that the same was taken on the basis on an endorsed invoice. Further reliance is also placed on the decision of the Hon'ble High court of Gujarat in the case of Darshan Industries Vs. Union of India 2014 (307) ELT 36 (Guj), wherein it was held that an assessee is entitled to claim credit on the basis of endorsed invoices. Further, Rule 9(1)(a) of the Cenvat Credit Rules, 2004 provides that an invoice issued by the manufacturer of excisable goods is a valid document for taking Credit of the duty paid on such goods. Further, Rule 9(2) of the Cenvat Credit Rules, 2004 provides that the document on the basis of which Credit is taken must contain details of duty payable, description of goods, assessable value, registration number of the person issuing invoice, name and address of the person issuing invoice. As long as these details are available on the invoice, Cenvat Credit cannot be denied to the person taking Credit for use of inputs in the manufacture of excisable goods. Rule 9 does not specify that the document must be issued in the name of the person who takes the Credit of duty paid on such goods. Further, the Proviso to Rule 9(2) of the Cenvat Credit Rules, 2004 provides that the credit may be allowed subject to the satisfaction of Assistant /Deputy Commissioner of Central Excise (AC/DC) that the goods have been received and accounted in the books account of the receiver. Therefore, if the Appellant is able to prove to the satisfaction of the AC/ DC that the goods have actually been received by them in their factory and are used by them in the manufacture of excisable goods, then they will be eligible to take the Credit of duty paid on inputs. The Appellant submits that in the instant case they have taken credit of the duty paid on the inputs received within the factory on the basis of eligible document, being endorsed invoices. It is clear from the above that the Appellant has complied with the condition laid down in Rule 4(1) of the Cenvat Credit Rules, 2004 and are thus eligible to take credit of the duty paid at the time of clearance of the manufactured goods and the impugned order to denying the credit availed by the Appellant is liable to be set aside. Without prejudice to the above submissions, the learned counsel for the Appellant further submits that when an activity is subsequently held to amount to manufacture, the assessee can take credit of inputs at that

point of time when the said activity is said to have amounted to manufacture. In this regard the Appellants place reliance on the decision of the Hon'ble tribunal in Delhi in the case of **Fedders Lloyd Corporation Ltd Vs. CCE, Mumbai - 2001 (135) ELT 1331 (Tri-Del)** wherein it was held that credit can be taken on inputs if the activity is subsequently said to amount to manufacture. This decision was also affirmed by the **Hon'ble Supreme Court in-[2008 (221) ELT 3 (SC)]**. It is clear from the above that the Appellant has rightly taken credit on the basis of invoices endorsed by M/s. 3M and the findings in the Impugned Order denying credit of the same is liable to be set aside.

33. The learned counsel submitted that extended period of limitation is not invocable. Therefore, the Show Cause Notice dated 22.05.2015 is partly time barred and imposition of penalty is not sustainable. The Show Cause Notice dated 22.05.2015 was issued for the period from 01.05.2010 to 23.11.2014 invoking extended period of limitation. Hence, the demand for the period from May 2010 to April 2014 amounting to Rs. 11,59,13,521/- is time barred. The Appellants have not suppressed any facts from the department, much less acted with an intent to evade the payment of duty. Hence the longer period of limitation cannot be invoked in the present case. The Appellants make the following specific submissions in support of this stance:

a. The Appellants submits that they are registered with the Central Excise Department since 2003. During the relevant period, the Central Excise Department has undertaken the Audit of the books of account of the Appellants during November 2012. However, no objections were raised by the department on the activity undertaken by the Appellants for M/s. 3M in relation to the 'IE coded' products. Further, the audit party identified short payment of service tax on job work charges collected from M/s. 3M for the financial years 2009-10 and 2010-11 and the same was paid by the Appellants along with interest under intimation to the department. Subsequently, the books of the Appellants were again subjected to Audit by the Central Excise department in August 2014, however,

again no objections on the above mentioned issue had been raised by the department.

b. When the unit of Appellant was subjected to periodical Audit, suppression cannot be alleged. Reliance is placed on following decisions:

- a. CCE, Bangalore Vs. Pragathi Concrete Products (P) Ltd-2015 (322) ELT 819 (SC)
- b. K.N. International Ltd Vs. CCE & ST-(2024) 17 CENTAX 115 (Tri-All)

34. The learned counsel submitted that the Appellants were under bona fide belief that the activity undertaken by them did not amount to 'manufacture' Further, the issue involved interpretation of law and classification dispute, in such circumstances, extended period of limitation cannot be invoked. Reliance is placed on the decision of Hon'ble Tribunal in the case of Ford India Ltd. Vs. Commissioner, LTU, Chennai 2018 (363) E.L.T. 737 (Tri. - Chennai) and Shivashakthi Bio Planteec Limited Vs. CCE-2019 (20) G.S.T.L. 243 (Tribunal). In view of the above, it is submitted that the extended period of limitation is not invocable in the instant case.

35. The learned counsel submitted that Personal penalty under Rule 26 is not sustainable. The impugned Order-in-Original has imposed penalties under Rule 26 of the Central Excise Rules, 2002 on M/s. 3M and the following persons Shri. Sumanth, Director of M/s. Vasudha Colours Pvt., Ltd., Shri. Samir Agarwal, CFO of M/s. 3M India Ltd., Shri. D.K. Suresh, Manager on the ground that they have aided and abetted non-payment of duty by the Appellant and that M/s. 3M had endorsed invoices pertaining to the raw material and sent the same to Appellant with an intention to pass on ineligible credit.

36. The requirement of Rule 26 is very specific and it shows that it refers to removal of excisable goods or concerning oneself with such excisable goods physically and the same should have been done with the

knowledge or reason to believe that the goods are liable to confiscation. No evidence has been led by the department as to how the Appellant has involved in clearance of goods without payment of duty. For establishing knowledge there must be some positive evidence which is missing in the present proceedings against the Appellant. Furthermore, the aforesaid personnel were and still are under the bonafide belief that the Company has rightly classified the subject goods under Chapter Sub-Heading No. 3811 of the First Schedule to the Central Excise Tariff Act, 1985. Reliance is placed on the following judgements:

- a. Nirmal Inductomelt Pvt. Ltd. Vs. Commissioner of C. Ex., Jaipur - 2010 (259) E.L.T. 243 (Tri. - Del.)
- b. Anil Kumar Saxena Vs. CCE-2000 (129) ELT 351
- c. Laurel Organics Ltd. Vs. CCE-2002 (140) ELT 151
- d. Z.U. Alvi Vs. CCE-2000 (117) ELT 69 (Tri.)

37. Learned Authorized Representative (AR) for the Revenue reiterated the finding in the impugned orders.

38. Heard both sides and perused the records.

39. We find that the Appellant receives the products from M/s. 3M in 200 litre barrel containers. The Appellant does not undertake labelling or relabelling of the containers. The appellant contended that the activity of repacking from 200 litre 'barrel containers' which are distinct from 'bulk packs' to 'retails packs' does not amount to manufacture in terms of Chapter Note 6 to Chapter 34 of First Schedule to the Central Excise Tariff Act, 1985, as the activity undertaken by the Appellant is not repacking from 'bulk packs' to 'retail packs'. Hence, the activity carried out by the appellant cannot be considered as manufacturing considering the activities/ process undertaken by the appellant. We find that the issue of repacking from 200 litre 'barrel containers' to 'retails packs' whether amounts to manufacture in terms of Chapter Note 6 to Chapter 34 of First Schedule to the Central Excise Tariff Act, 1985 was considered by this Tribunal in the case of **M/s. 3M India Ltd & Ors. Vs. CCE, Bangalore-**

III & Ors. 2023(2) TMI 729 CESTAT Bangalore whereby similar activity of packing of Diesel Engine Conditioner, Fuel System Cleaner and Intake System Cleaner from containers of 200 litre barrel containers into retail packs and labelling on such packs undertaken by one of the Job worker (Indicans) of M/s. 3M India Ltd., was held to be not amounting to manufacture in terms of Note 6 to Chapter 34 or Chapter Note 10 of Chapter 38 of the Central Excise Tariff Act, 1985. The Hon'ble Tribunal in above case held as under;

"27. The first issue that arises for consideration in these appeals is as to whether the activity undertaken by the job worker would amount to 'manufacture' under Section 2(f)(ii) of the Excise Act.

28. The impugned order has confirmed the duty demand against the job worker holding that the activity of aerosol filling/ packing/ labelling would amount to manufacture in terms of Section 2(f)(ii) of the Excise Act read with Chapter Note 6 of Chapter 34 or Chapter Note 10 of Chapter 38.

29. As noticed above, the show cause notice alleges that the job worker carries out packing/ repacking of the products received from the appellant into retail packs and also affixes labels printed with details, including MRPs. The contention of Learned Counsel for the appellant and Learned Counsel appearing for the job worker is that the activity undertaken by the job worker would not amount to manufacture for the reason that the job worker undertakes aerosol filling/ packing of the raw materials delivered by the appellant in 200 litre container barrels into retail packs and thereafter affixes labels on such retail packs. Thus, according to the Learned Counsel, the activity of the job worker would not amount to repacking from bulk packs to retail packs for what is actually undertaken is the activity of packing the raw material from 200 litre containers to retail packs and in this connection, Learned Counsel stressed upon the use of the two expressions 'containers' and 'bulk packs' in Chapter Note 6 of Chapter 34 of the Central Excise Tariff.

30. Learned Authorised Representative appearing for the department, however submitted that the activities undertaken by the job worker

would amount to manufacture for the reason that the activity of aerosol filling/ packing/ labelling of IE coded products on job work basis would amount to manufacture under Section 2(f)(ii) of the Excise Act read with Note 6 of Chapter 34 of Central Excise Tariff. According to the Learned Authorised Representative, the conversion of the goods from bulk containers to retail containers, labelling them and sending them market ready is an activity of rendering the product marketable which should be construed as amounting to manufacture. In this connection Learned Authorised Representative placed emphasis on Chapter Note 6 of Chapter 34, which is similar to the Chapter Note 10 of Chapter 38 of the Central Excise Tariff Act and contended that the Chapter note seeks to widen the scope of manufacture by including the activities which would otherwise fall outside the scope of the definition of the said term under Section 2(f) of the said Excise Act. Learned Authorised Representative also submitted that even the third limb of the note relating to adoption of any other treatment to render the product marketable to the consumer would also be applicable.

31. The present appeal concerns only the activity undertaken by the job worker involving repacking from bulk containers received from the appellant into retail packs in respect of three IE coded products, namely (i) Diesel Engine Conditioner; (ii) Fuel System Cleaner; and (iii) Intake System Cleaner, for which the appellant pays job charges to the job worker and the purchase orders placed on the job worker indicate that NIL excise duty would be payable and service tax @ 12.36% would be payable.

32. Section 2(f) of the Excise Act defines 'manufacture'. In terms of Section 2(f)(ii) 'manufacture' would include any process which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff as amounting to manufacture. Chapter Note 6 of Chapter 34 and Chapter Note 10 of Chapter 38 provide that in relation to products of the concerned Chapter, labelling or relabelling of containers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to manufacture.

33. *The Chapter notes seek to extend the definition of 'manufacture' and should be strictly interpreted in view of the decisions of the Supreme Court in Union of India & Ors. v. Bombay Tyre International Ltd. [1983 (14) E.L.T. 1896 (S.C.) = 1983 taxmann.com 549 (SC)] and Commissioner of Customs (Import), Mumbai v. Dilip Kumar [2015 (325) E.L.T. 815 (S.C.)].*

34. *For the activities undertaken by the job worker to amount to 'manufacture' under Note 6 of Chapter 34, it should include any of the following activities:*

- (i) labelling or relabelling of containers; or*
- (ii) repacking from bulk packs to retail packs; or*
- (iii) adoption of any other treatment to render the product marketable.*

35. *It is not in dispute that the job worker carries out aerosol filling/packing/ labelling of the raw materials received in bulk containers consisting of 200 litre barrels from the appellant into the retail packs and thereafter affixes labels on such retail packs. It is not the case of the department that the job worker undertakes labelling/ relabelling of the containers in which raw materials are received. Thus, the first condition is not satisfied.*

36. *The job worker also does not repack from bulk pack to retail packs. The raw materials in liquid form are transported in bulk containers of 200 litres and the job worker, upon receiving the raw materials, undertakes the activity of retail packing the raw materials from 200 litres containers into aerosol pressurized can. The job worker, therefore, does not repack from bulk packs to retail packs.*

37. *It needs to be noted that the Note 6 of Chapter 34 has consciously used distinct expressions 'containers' and 'bulk packs'. Thus, when the Legislature has consciously used two different words, they would have different implications and in this connection reliance can be placed on the decision of the Supreme Court in Union of India v. Kumho Petrochemicals Company Limited [2017 (351) E.L.T. 65 (S.C.) = [2017] 83 taxmann.com 149 (SC)/63 GST 311 (SC)], wherein it was held that as the Legislature has used different expressions at different*

places, it must be presumed that such different expressions have different implications.

38. 'Containers' are distinct from 'bulk packs' and, therefore, the activity of repacking from 'containers' to 'retail packs' would not amount to manufacture.

39. In this connection, reference can be made to the decision of the Supreme Court in Commissioner of Central Excise, Vadodara v. Vadilal Gases Ltd. [2017 (346) E.L.T. 161 (S.C.) = [2017] 79 taxmann.com 121 (SC)/[2017] 60 GST 250 (SC)], wherein it was held that the gases supplied in tankers are not in bulk packs and, therefore, the activity of repacking from tankers to retail packs would not amount to manufacture. Reference can also be made to the decision of the Tribunal in Swastik Corporation v. Commissioner of Central Excise, Puducherry [2018 (359) E.L.T. 233 (Tri. - Chennai)], wherein after placing reliance on the decision of the Supreme Court in Vadilal Gases Ltd., it was held :

4.....For convenience of reference the entry under Note 11 of Chapter 29, as it stood at the relevant time, is reproduced below (effective from 22-9-1997):

"In relation to products of this Chapter, labelling or relabelling of containers or repacking from bulk packs to retail packs or adoption of any other treatment to render products marketable to the consumer shall amount to manufacture."

5. In respect of the very same issue, the Board has clarified vide Circular No. 910/30/2009-CX., dated 16-12-2009 that the activity does not amount to manufacture and is reproduced below:

"Therefore, the tankers cannot be termed as bulk packs and therefore the activity of transferring the goods from tankers into smaller drums cannot be said to be covered by the said Chapter Note 10".

6. The Board has issued the above clarification pursuant to the judgment of the Hon'ble Tribunal in the case of Ammonia Supply Co. reported in 2001 (131) E.L.T. 626 as noted in para 3 of the Circular.

7. Further, by a very recent judgment the Hon'ble Supreme Court in the case of C.C.E., Vadodara v. Vadilal Gases Ltd. reported in 2017 (346) E.L.T. 161 (S.C.) on identical facts and circumstances has categorically held as under :

"Gases coming in tankers were not bulk packs and their repacking relabelling did not amount to manufacture"

8. The Hon'ble Apex Court in the said judgment has approved the judgment of the Hon'ble Tribunal in the case of Ammonia Supply Co. v. Commissioner (supra) after noting that the order of the Hon'ble Tribunal has attained finality having not been challenged by the Department.

9. In view of the above, when the activity itself does not amount to deemed manufacture, the question of demand of duty does not arise and hence the other issue raised by the Department regarding availability of exemption does not survive for determination."

40. The impugned order holds that the activity undertaken by the job worker of repacking raw material received from the appellant into retail packs would amount to manufacture. There is no finding that the job worker undertakes the activity of repacking from bulk packs to retail packs nor does the appellant undertake such an activity.

41. With regard to the activity of adopting any treatment to render the product marketable to the consumer, it is the case of the appellant and the job worker that such a treatment has not been undertaken on the raw materials supplied by the appellant in bulk containers to the job worker, as the raw materials are injected into aerosol cans and thereafter plastic caps are fitted and labels are affixed on the cans. This activity of injecting the raw materials into aerosol cans would not amount to adopting any treatment on the raw materials to render the product marketable. This is what was held by the Supreme Court in Vadilal Gases Ltd.

42. Learned Authorized Representative appearing for the Department has placed reliance upon the decision of the Tribunal in Nestle India Ltd. The said decision would not help the Department as in that case there was mixing of vitamins in required proportions

which, the Tribunal held, would amount to adopting a treatment to render the goods marketable.

43. In this view of the matter, the activity undertaken by the job worker would not amount to manufacture even under the third limb of the Chapter note.

44. The inevitable conclusion, therefore, is that the process undertaken by the job worker would not amount to manufacture in terms of Section 2(f)(ii) of the Excise Act read with Note 6 of Chapter 34 or Note 10 of Chapter 38 of the Central Excise Tariff.

45. The second issue that requires to be examined is about the classification of the products said to have been manufactured by the job worker. As the first issue has been decided in favour of the job worker, namely that the process undertaken by the job worker would not amount to 'manufacture', it would not be necessary to decide this issue.

46. Once it is held that the activity undertaken by the job worker would not amount to manufacture under Section 2(f)(ii) of the Excise Act, penalties could not have been imposed either upon the employees of the appellant or the employee of the job worker.

47. Such being the position, the order dated 19-1-2016 passed by the Commissioner cannot be sustained and is set aside. In the result, the excise appeals are allowed."

40. We find that the Appellant-M/s. Vasudha Colour Pvt., Ltd. filed Appeal No. E/20715/2016 and Appeal Nos. E/20712, 20713, 20714, 20716/2016 are filed by the co-appellants namely M/s. 3M, Shri. Sumanth, Director of M/s. Vasudha Colours Pvt. Ltd., Shri. Samir Agarwal, CFO of M/s. 3M India Ltd., Shri. D.K. Suresh, Manager for the period 01.05.2010 to 23.11.2014 when they were clearing the 'IE coded products' after repacking of the material supplied by M/s. 3M in '200 litre barrels containers' into 'retail packs' (ranging from 25 ml to 250 ml) and affixing labels printed with all the relevant details. The appellant has not availed any cenvat credit on the material supplied by M/s. 3M. Further, we find that the appellant had paid service tax on packing activity as a job worker.

41. In view of the decision of this Hon'ble Tribunal in the case of **M/s. 3M** (supra), we find that the activity undertaken by the Appellant - M/s. Vasudha of packing of goods from '200 Litre barrel containers' into 'retail packs' (ranging from 25ml to 250 ml) and sending the same to M/s. 3M does not amount manufacture in terms of Chapter notes in the Central Excise Tariff Act, 1944 read with Section 2(f)(ii) of the Act, ibid.

42. We find that other issue involved in in these appeals is with regard to classification of the impugned goods, whether under Central Excise Tariff Heading (CETH) 3811 as claimed by the appellant or under Central Excise Tariff Heading (CETH) 3403 as confirmed by the Revenue. We find that, in the case of M/s. 3M (supra), the Hon'ble Tribunal has not dealt with the issue of classification of the goods and has held that;

"45. The second issue that requires to be examined is about the classification of the products said to have been manufactured by the job worker. As the first issue has been decided in favour of the job worker, namely that the process undertaken by the job worker would not amount to 'manufacture', it would not be necessary to decide this issue."

43. We find that the issue of classification of the impugned goods whether under Central Excise Tariff Heading (CETH) 3811 as claimed by the appellant or Excise Tariff Heading (CETH) 3403 as confirmed by the Revenue is involved in the case of 'IE coded' products during the period 01.05.2010 to 23.11.2014, when the appellant was clearing the impugned goods to M/s. 3M on job work and paying service tax as a job worker. The issue of manufacture has been decided by the decision in **M/s. 3M** (supra) wherein the job worker is M/s. Indicans and in this decision, the issue of classification has not been examined. We find that of the Hon'ble Tribunal in the case of M/s. 3M with regard to the issue of whether the packing from 200 Litre barrel containers to retail packs (ranging from 25 ml to 250 ml) held that the activity does not amount to manufacture in terms of the Chapter notes to Central Excise Tariff Act, 1985 read with section 2(f)(ii) of the Act, ibid. Therefore for the period

01.05.2010 to 23.11.2014, the issue of classification covered by Main Appeal No. E/20715/2016 is not required to be examined.

44. Further with regard to penalties imposed in the case of M/s. 3M it held as under:

"46. Once it is held that the activity undertaken by the job worker would not amount to manufacture under Section 2(f)(ii) of the Excise Act, penalties could not have been imposed either upon the employees of the appellant or the employee of the job worker."

Therefore as regards the Personal penalties in Appeal Nos. E/20712-20714/2016 and E/20716/2016 following the above decision in M/s. 3M penalties imposed on the Appellant- M/s. Vasudha Colours Pvt., Ltd., and the Co-Appellants namely M/s. 3M, Shri. Sumanth, Director of M/s. Vasudha Colours Pvt., Ltd., Shri. Samir Agarwal, CFO of M/s. 3M India Ltd., Shri. D.K. Suresh, Manager are not sustainable and liable to be set aside.

45. We find that the appellant had changed his business model by getting the material from the approved vendors of M/s. 3M from 24.11.2014 onwards and was availing credit on these materials and clearing the goods to M/s. 3M on payment of central excise duty. The Department has issued show cause notices (SCNs)/ Statement of demands(SODs) for the period 25.11.2014 to June 2015, July 2015 to December 2015 and January 2016 to December 2016, which are the subject matter in Appeal Nos. E/20453/2017, E/20456/2017 and E/20846/2019, wherein the goods have been reclassified by the Revenue under Central Excise Tariff heading (CETH) 3403 as opposed to the classification under Central Excise Tariff Heading (CETH) 3811 as claimed by the appellant and demanded the duty on valuation under section 4A of Central Excise Act, 1944, since the impugned goods were held classifiable under Central Excise Tariff Heading (CETH) 3403, liable for valuation under section 4A of the Central Excise Act, 1944. The appellant in this regard has contended that the goods are not 'lubricants' to be classified under Central Excise Tariff Heading (CETH) 3403 and that they are rightly classifiable under Central Excise Tariff Heading (CETH) 3811,

which is not covered for valuation under section 4A of the Act, *ibid*, i.e., MRP valuation. We find that the 'IS coded' products are classified under Central Excise Tariff Heading (CETH) 3811 and cleared by the appellant during the period post 24.11.2014 on payment of duty. We have examined the contention of the department with regard to the classification of the impugned goods and the classification adopted by the appellant, the contention of the appellant is that the impugned goods are not 'lubricants of oil', but they are 'additives' and 'flushes'. In this regard, the appellant had submitted the Bill of Material (BOM)/ flyers/ catalogues/ labels/ invoices of the impugned goods namely Petrol fuel tank additive, Diesel fuel tank additive, Engine oil additive, Engine oil additive, Transmission oil additive, Radiator additive, Engine oil saver, Engine oil plus, wherein they have been classified as 'additives' or 'flushes' under Central Excise Tariff Heading(CETH) 38119900, however Revenue confirmed the classification of the above impugned goods as 'lubricants' falling Central Excise Tariff Heading (CETH) 3403.

46. As regards the classification issue, the contending entries are Central Excise Tariff Heading(CETH) 3811 as claimed by the appellant and Central Excise Tariff Heading(CETH) 3403 as confirmed by the Revenue. In order to determine the classification of the impugned products, the chapter headings and related HSN notes are extracted as under;

Chapter Heading 3403:

Tariff Item	Description	Unit	Rate
3403	Lubricating preparations (including cutting-oil preparations, bolt or nut release preparations, anti-rust or anti-corrosion preparations and mould release preparations, based on lubricants) and preparations of a kind used for the oil or grease treatment of textile materials, leather, furskins or other materials, but excluding preparations containing, as basic constituents, 70% or more by weight of petroleum oils or of oils obtained from bituminous minerals	—	—

	- Containing petroleum oils or oils obtained from bituminous minerals :	—	—
3403 11 00	-- Preparations for the treatment of textile materials, leather, furskins or other materials	kg.	12.5%
3403 19 00	-- Other	kg.	12.5%
	- Other :	—	—
3403 91 00	-- Preparations for the treatment of textile materials, leather, furskins or other materials	kg.	12.5%
3403 99 00	-- Other	kg.	12.5%

HSN notes to Chapter Heading 3403:

34.03 - Lubricating preparations (including cutting-oil preparations, bolt or nut release preparations, anti-rust or anti-corrosion preparations and mould release preparations, based on lubricants) and preparations of a kind used for the oil or grease treatment of textile materials, leather, furskins or other materials, but excluding preparations containing, as basic constituents, 70% or more by weight of petroleum oils or of oils obtained from bituminous minerals.

- Containing petroleum oils or oils obtained from bituminous minerals:

3403.11 - - Preparations for the treatment of textile materials,
leather, furskins or other materials

3403.19 - - Other

- Other:

3403.91 - - Preparations for the treatment of textile materials, leather,
furskins or other materials

3403.99 - - Other

Provided they do not contain, as basic constituents, 70% or more by weight of petroleum oils or oils obtained from bituminous minerals (see heading 27.10), this this heading includes, inter alia, prepared mixtures of the following types:

(A) Lubricating preparations designed to reduce friction between the moving parts of machinery, vehicles, aircraft or other appliances, apparatus or instruments. Such lubricants usually consist of, or are based on, mixtures of animal, vegetable or mineral oils, fats or greases, often with additives (e.g., graphite, molybdenum disulphide, talc, carbon blacks, calcium or other metallic soaps, pitch, or rust, oxidation, etc., inhibitors). However, the heading also includes synthetic lubricating preparations based on, for example, dioctyl or dinonyl sebacates, phosphoric esters, polychlorobiphenyls, poly(oxyethylene) (polyethylene glycol) or poly(oxypropylene) (polypropylene glycol). These synthetic lubricants, which include "greases" based on silicones or jet lube oils (or synthetic ester lubes), are designed to operate under specially exacting conditions (e.g., fire-resistant lubricants, lubricants for precision instrument bearings or jet engines).

Chapter Heading 3811;

3811	Anti-knock preparations, oxidation inhibitors, gum inhibitors, viscosity improvers, anti-corrosive preparations and other prepared additives, for mineral oils (including gasoline) or for other liquids used for the same purposes as mineral oils		
	- Anti-knock preparations :		
3811 11 00	- Based on lead compounds	kg.	12.5%
3811 19 00	- Other	kg.	12.5%
	- Additives for lubricating oils :		

3811 21 00	- Containing petroleum oils or oils obtained from bituminous minerals	kg.	12.5%
3811 29 00	- Other	kg.	12.5%
3811 90 00	- Other	kg.	12.5%

HSN notes to Chapter Heading 3811:

38.11 Anti-knock preparations, oxidation inhibitors, gum inhibitors, viscosity improvers, anti-corrosive preparations and other prepared additives, for mineral oils (including gasoline) or for other liquids used for the same purposes as mineral oils.

- Anti-knock preparations:

3811.11 - - Based on lead compounds

3811.19 - - Other

- Additives for lubricating oils:

3811.21 - - Containing petroleum oils or oils obtained from bituminous minerals

3811.29 - - Other

3811.90 - - Other

The preparations of this heading are additives for mineral oils or for other liquids used for the same purposes to eliminate or reduce undesirable properties, or to impart or enhance desirable properties.

(A) Prepared additives for mineral oils.

1.- Additives for crude oils. This group includes anti corrosives which are added to crude oils to protect metal structures (in particular, distillation columns). Their active constituents are generally amino-type substances derived in particular from imidazoline.

2- Additives for gasoline (petrol). This group includes:

(a) Anti-knock preparations which increase the resistance of fuels to premature ignition and thus prevent knocking. They are usually based on tetraethyllead and tetramethyllead, and also contain, for example, 1,2-dibromoethane or monochloronaphthalene. The heading does not include leaded anti-knock compound sludges obtained from storage tanks for leaded anti-knock compounds and consisting essentially of lead, lead compounds and iron oxide (heading 26.20).

(b) Oxidation inhibitors. The most important oxidation inhibitors are based on phenolic products (e.g., dimethyl-tert-butylphenol), and such derivatives of aromatic amines as alkyl p-phenylenediamines.

(c) Anti-icing preparations. Products often based on alcohols (e.g., propan-2-ol (or isopropyl alcohol)), which are added to gasoline (petrol) to prevent the formation of ice in fuel systems.

(d) Detergents. Preparations used to keep the carburettor and the inflow and outflow of the cylinders clean.

(e) Gum inhibitors. These products are intended to prevent the formation of gum in the carburettor or engine intake.

47. The appellant submitted the following table, giving the classification, ingredients used and use /description of the impugned products.

SI No.	Product name	Ingredient / Product used	Name of supplier	Supplier Classification	Uses/description	Arguments on classification
1	Petrol Fuel Tank Additive	• CVC FIC	Chem-Verse Consultants (India) Pvt Ltd	3811	• It is a mixture of Hydrocarbons and is in the nature of fuel additives. • Formulated with powerful detergent dispersion and corrosion inhibitor additive components to combat the common injector and fuel system fouling problems. • It is added to the Petrol engines to: - improve engine performance - maintain the cleanliness of injector nozzle and other fuel components from carbon and gummy deposits	• Nomenclature itself suggests that it is an additive • Neither the label nor the product literature states that Diesel/Petrol Fuel Tank Additive is used to reduce wear and tear – common parlance • American Petroleum Institute (API) publishes standards for the segment of lubricants/lubricating preparations and the product bears a mark "API"

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					- The Corrosion Inhibitors in the product protects injector tips and other fuel systems parts from excessive corrosion -Injector Cleaner is a fuel detergent additive with excellent water dispersion properties. It reduces the moisture condensation in fuel tank - improve acceleration - reduce exhaust emissions - reduce knock, noise, misfire, ignition delay and crank time - ease the cold starts	approved". The Diesel Fuel Tank Additive does not subscribe to the referred standards and therefore the said mark is not forming part of its label. - Neither the product literature nor the product label claims the Petrol Fuel Tank Additive to be a lubricating preparation used for reducing wear and tear - Supplier also classified it under 3811
2.	Diesel Fuel Tank Additive	DFA 561	Chem-Verse Consultants (India) Pvt Ltd.		- It is a mixture of Hydrocarbons and is a concentrated high performance and multi-functional diesel fuel additive. - It is added to the Diesel engines to: - improve engine performance - clean fuel injectors of all diesel engines - Reduce the moisture condensation in fuel tank - prevent corrosion on the fuel tank and fuel lines - improve acceleration - reduce exhaust emissions - reduce knock, noise, misfire, ignition delay and crank time - ease the cold starts	
3	Engine Oil Additive	Polylube(X)	Chem-Verse Consultants (India) Pvt Ltd	3811	- Mixture of Hydrocarbons and is in the nature of oil additives i.e., added to the crank case along with new engine oil. It may be added during every oil change to; - improve engine power and performance - prevent oil foaming for better lubrication - protect against oil film break down - reduce friction on critical engine parts - reduce building up of harmful deposits	- Nomenclature itself suggests that it is an additive - No API mark has been affixed on the label - Supplier also classified it under 3811

4	Transmission Oil Additive	• Gear Add	Chem-Verse Consultants (India) Pvt Ltd.	3811	- Added to the oil in the gear box to enhance the properties of gear box by performing the following functions: - improves extreme pressure characteristics of any gear oil - substantially lowers the coefficient of friction and improves thermal stability and lubricant life - increases the thickness of lubricant film - aids in smooth gear shifting - reduces friction and overall transmission temperature - helping reduce wear and tear of gears	- Nomenclature itself suggests that it is an additive - No API mark on the label - Even if the product answers to 3811 and 3403, as per GRI 3(c) the classification should fall under the heading which occurs last in numerical order. - Supplier also classified it under 3811
5	Radiator Additive	• RAD ADD	Chem-Verse Consultants (India) Pvt Ltd.	3811	- Consists of mixture of hydrocarbons and used as an advanced concentrated formula with corrosion protection and acid neutralizer properties to maintain cooling efficiency of all types of aluminium radiators - Maintains cooling efficiency of all types of aluminium radiators - Helps improve heat dissipation - Helps control coolant separation - Works as acid neutralizer - Helps prevent corrosion	- Nomenclature itself suggests that it is an additive - Neither the labels nor the product literature states that the Radiator additive is used to reduce wear and tear - Department did not lead any evidence to substantiate that it is a lubricant falling under 3403
6	Engine Oil Saver	• Oil Saver 77	Chem-Verse Consultants (India) Pvt Ltd.	3811	- Consists of a mixture of hydrocarbons with polymeric viscosity modifier for use in engine oil - Added in engine oil to improve viscosity of the engine oil. - Supplier's description refers to the product as an 'additive'	Supplier also classified it under 3811

7	Engine Oil Plus	• Polylube-X	Chem-Verse Consultants (India) Pvt Ltd.	3811	• A colloidal dispersion of solid lubricants in a very high-grade synthetic lubricating oil blended with anti-oxidant & dispersant additives. • To all lubricants it can be used as: Friction reducing agent, E. P. (Extreme-pressure), Assembly compound & Running-in oil additive • With the engine switched off, the engine oil plus is to be added to the crank case along with new engine oil. Depending on the level of oil in the crank case, the oil may have to be removed, if necessary. Therefore, the level of oil present in the crank case has to be decided and altered.	• Same ingredient as of 'Engine Oil Additive' is being used as such the said product is also an additive. • No API mark has been affixed on the label • Supplier also classified it under 3811
8	Engine Oil Flush	• Flusher-E	Chem-Verse Consultants (India) Pvt Ltd.	3811	• Added to engine oil and acts as a cleaner. • After being added to engine oil, the engine is run for 15-20 minutes and later the engine oil is drained. Later, new engine oil is used. • As per 'directions for use' on the label, the Engine Oil Flush is added to the old oil and the same is flushed out of the system. • The supplier has classified it under 3811 and calls the ingredient as an 'additive'. • Supplier specifically states that this product is "used for internal cleaning and flushing of gear boxes of equipment & components, which are subsequently lubricated with fresh lubricating oils, especially when synthetic oil is charged afresh".	• A lubricating oil is not flushed out whereas the Engine Oil Flush is flushed out with engine oil to replace it with new engine oil • Alternatively, Engine Oil Flush is classifiable under 3402 as a Cleaning Agent
9	Transmission Oil Flush	• Flusher-G	Chem-Verse Consultants (India) Pvt Ltd	3811	• An additive for flushing used oil. • It removes carbon and varnish deposits of the oxidized oil and other contaminants from the gear boxes and lubricating oil circulation systems, pipelines and tanks. • It is normally used for internal cleaning and flushing of gear boxes of equipment & components, which are subsequently lubricated with fresh lubricating oils, especially when synthetic oil is charged afresh.	• It is also in nature of a flush and does not have any lubricating properties. • Further, it is being marketed as a 'flush'. • Alternatively, it can be classified under 3402 as a cleaning agent

10	Engine Crank Case Flush	• Flusher-E	Chem-Verse Consultants (India) Pvt Ltd	3811	• Added to engine oil to act as a cleaner • Removes sludge and other deposits from the engine • Helps improve performance • The supplier has also classified it under 3811	• Since it is used as a cleaner, it cannot be called a lubricant. • Further, it is being marketed and claimed as 'flush' • Alternatively, Engine Crank Case Flush is classifiable under 3402 as a Cleaning Agent
11	Radiator Flush	• Flusher-R	Chem-Verse Consultants (India) Pvt Ltd	3811	• Added to radiator to remove rust, sludge and scale deposits • Cleans cooling system of engine • Provides complete cleaning of cooling system • Helps maintain optimum engine cooling and reliability • After addition of the Radiator Flush and running of the engine for about 15-20 minutes, the old coolant is drained from the engine and new coolant is replaced • Supplier also states the use as "effective fluid for flushing radiators. It removes rust, sludge and scale deposits and contaminants in Radiators". • Supplier also states "Specifically formulated flush and cleaning agent..."	• A lubricating oil is not flushed out whereas the Radiator Flush is flushed out with coolant to replace it with new coolant. • Even if the product answers to 3811 and 3402, as per GRI 3(c) the classification should fall under the heading which occurs last in numerical order. • Alternatively, it should be classifiable under 3402

48. The Flyers/ catalogues, labels Bill of Materials (BOM) and the invoices submitted by the appellant for the impugned goods namely Petrol fuel tank additive, Diesel fuel tank additive, Engine oil additive, Engine oil additive, Transmission oil additive, Radiator additive, Engine oil saver, Engine oil plus have also been examined.

49. On analysing the above Chapter Headings, the relevant HSN notes, catalogues and the other details of the impugned products submitted by the appellant the following conclusions emerge;

Fuel Additives: Products mixed into the fuel tank (like injector cleaners or Petrol Additives) use detergents (such as polyetheramine) to dissolve carbon, varnish, and gum deposits in the fuel injectors, intake valves, and combustion chambers. While some diesel fuel additives restore lubricity lost in ultra-low sulfur

diesel to protect high-pressure fuel pumps, the additive itself is a cleaning/ treating chemical, not an engine lubricant.

Fuel/Engine Flushers: Flush treatments designed for the fuel system break down gummy deposits in lines and injectors. (Note: Engine oil flushes are added to engine oil not fuel right before an oil change to clean out sludge from the crankcase.

Lubricants: Fluids like engine oil or gear oil are formulated with base oils and specific lubricant additives to create a physical film separating moving metal parts to reduce friction. Pouring fuel additives or flushers into your oil system or treating fuel as a pure lubricant can cause severe mechanical damage.

Hence, Fuel Additives and flushers are added directly to petrol or diesel are cleaning and conditioning agents, whereas oil additives/ flushes are added to the engine oil /crank case and not to the fuel, petrol or diesel.

50. We have examined details in the Bill of Material (BOM)/ flyers/ catalogues/ labels/ invoices of the impugned goods and find that the impugned products cleared by the appellant are not lubricants in view of the discussion at Paras 46 to 49, supra. Further the appellant had also contended that the goods were received from the vendors approved by M/s. 3M in 200 Litre barrel containers and the suppliers have classified them under Central Excise Tariff Heading (CETH) 3811 9000 and such classification and clearance by the suppliers' on payment of duty has not been questioned at the suppliers' end, therefore, questioning the classification at the buyer/ recipient end is not sustainable in law.

51. In view of the above discussion, we find that the differential duty confirmed along with interest classifying the goods under Central Excise Tariff Heading (CETH) 3403 for the period post 24.11.2014, i.e., clearance of 'IS coded' products to M/s. 3M are not sustainable, and therefore, the impugned orders in respect of the 'IS coded' products cleared to M/s. 3M on payment of central excise duty by adopting the valuation under section 4A of the Central Excise Act, 1944 are liable to

be set aside, since the products classifiable under Central Excise Tariff Heading (CETH) 3811 are not covered by Notification No.49/2008-CE (NT) for valuation under section 4A of the Central Excise Act, 1944.

52. In the result for the period prior to 24.11.2014, wherein the appellant had cleared 'IE coded' products after repacking from 200 litre barrel container into retail packs (ranging from 25ml to 250 ml), the activity carried out by the appellant and paying service tax as a job worker is not considered as manufacture in terms of Note 6 to Chapter 34 or Chapter Note 10 of Chapter 38 of the Central Excise Tariff Act, 1985 read with section 2(f)(ii) of Act, *ibid* following the decision of Hon'ble Tribunal the case of **M/s. 3M** (*supra*), therefore, the demand of duty along with interest and imposition of penalty on the appellant and the Co-Appellants namely M/s. 3M, Shri. Sumanth, Director of M/s. Vasudha Colours Pvt., Ltd., Shri. Samir Agarwal, CFO of M/s. 3M India Ltd., Shri. D.K. Suresh, Manager are not sustainable and liable to be set aside. Further the appellant has raised the issue of invocation of extended period. We also find that for the period 01.05.2010 to 23.11.2014 invocation of extended period of limitation is also unsustainable.

53. Further for the period post 24.11.2014, the appellant, was procuring the raw materials from the approved vendors of M/s. 3M, availing cenvat credit, and clearing the goods as 'IS coded' products on payment of central excise duty to M/s. 3M. The 3(three) appeals filed by the appellant for the period post 24.11.2014, is against the impugned orders where the issue involved is with respect to the classification of the 'IS coded' products under Central Excise Tariff Heading (CETH) 3811 as claimed by the appellant or under Central Excise Tariff Heading (CETH) 3403 as confirmed by the department and confirmation of the differential duty and the interest thereon as impugned goods are liable for valuation under section 4A of the Central Excise Act, 1944 i.e., MRP valuation, as the impugned products are rightly classifiable under Central Excise Tariff Heading (CETH) 3403. We find that the appellant paid the duty on valuation under section 4 of the Central Excise Act, 1944. In view of the above discussion the impugned goods are rightly classifiable under,

Central Excise Tariff Heading (CETH) 3811. Therefore, the confirmation of differential demands along with interest for the period post 24.11.2014 are unsustainable and are liable to be set aside. Further the penalties imposed on the appellant are unsustainable and liable to be set aside. Hence the confirmation of demand of differential duty along with interest and the penalties imposed are set aside. However the duties paid under Section 4 valuation and appropriated in the impugned orders are upheld.

54. Accordingly, the impugned orders in Appeal Nos. E/20712/2016, E/20713/2016, E/20714/2016, E/20715/2016, E/20716/2016 are set side and the appeals are allowed with consequential relief, if any, as per law. As regards Appeal Nos. E/20453/2017, E/20456/2017 and E/20846/2019, the appeals are allowed in the above terms. The Miscellaneous application filed by the appellant is also disposed.

*(Operative portion of the order was pronounced in open court
on conclusion of hearing)*

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

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