

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. III

Excise Appeal No. 40706 of 2017

(Arising out of Order-in-Appeal No.495/2016 (CXA-II) dated 22.12.2016
passed by Commissioner of Central Excise (Appeals-II), Chennai)

M/s. Hindustan Unilever Ltd.,

....Appellant

Skin Care Unit,
NH-45A, Vadamangalam,
Puducherry-605 102.

Versus

Commissioner of GST & Central Excise ... Respondent

No.1, Goubert Avenue,
Puduchery-605 001.

APPEARANCE:

Ms. Padmavati Patil and Mr. Vijay Roshan, Advocates for the
Appellant

Mr. S. Subramanian, Special Counsel and Mr. M. Selvakumar,
Authorised Representative for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.40597/2025

DATE OF HEARING: 27.01.2025

DATE OF DECISION: 09.06.2025

Per: Shri P. Dinesha

This appeal is filed against Order-in-Appeal No.495 (2016) (CXA-II) dated 22.12.2016 passed by Commissioner (Appeals), Chennai.

2. Heard Ms. Padmavati Patil, Ld. Advocate along with Mr. Vijay Roshan, Ld. Advocate for the Appellant and Mr. S. Subramanian, Ld. Special Counsel along with Mr. M. Selvakumar, Ld. Assistant Commissioner, for the Respondent

3. The facts of the case are that the Appellants are engaged in the manufacture of inter-alia "Skin Care Preparations" falling under Chapter 33 and Pure Petroleum Jelly falling under Chapter 27 of the First Schedule to CETA. The Petroleum Jelly is being marketed under the brand name of "Vaseline". Pure Petroleum Jelly manufactured by the Appellants was/is being classified under Tariff Item 2712 10 90 and duty was discharged thereon at the applicable rates. The rate of basic excise duty for the disputed products was changed from time to time during the disputed period; with effect from 07.12.2008, rates of duty for Cosmetics was reduced from 14% to 10% and further

reduced from 10% to 8% w.e.f. 25.02.2009. It was enhanced to 10% from 27.02.2010 and further enhanced to 12% from 17.03.2012. The percentage of abatement was changed from time to time, but the rate for Petroleum Jelly under Tariff Item 2712 10 90 remained same at 14%. The Appellants filed Self-Declarations, Monthly ER-1Returns, etc. from time to time. In the year 2009, the Appellants developed two new products, namely "Petroleum Jelly-Baby" and "Petroleum Jelly-Aloe Vera" and classified the same as Cosmetics under Chapter 33 and paid duty applicable thereto. For manufacture of White Petroleum Jelly IP, packing size of 8, 25, 40, 50, 100 & 200 gms, Food and Drugs Administration, Pondicherry (FDA) had issued Food and Drugs Licence No.PP/5499/98 dated 06.11.1998 in Form 25, under Rule 70 of Drugs and Cosmetics Rules, 1945 (P/39). Said FDA Licence indicates that the disputed products are the products other than those specified in [Schedules C, C(1) and X] to the Drugs and Cosmetics Rules, 1945. As the Appellants started manufacturing additional Cosmetic products, they applied for and following additional endorsement dated 27.10.2010 was made in the

Licence No.PP/5498/98 dated 6.11.1998 (P/42) issued to them:

Additional Endorsement:

106. Vaseline Light Hydrating Jelly-Aloe Fresh

107. Vaseline Gentle Protective Jelly-Baby (Domestic)

Pack Size: 25ml. Pack

4. It appears that a Show Cause Notice dated 06.04.2015 was issued proposing to demand a duty of ₹3,03,965/- with applicable interest and penalty on the clearances made by the appellant of the disputed products during the period March 2014 to January 2015, alleging incorrect classification and thereby proposing to classify the disputed product namely Petroleum Jelly – Aloe Vera and Petroleum Jelly – Baby (variants of petroleum jelly) under tariff item 2712 1090. This was against the declared tariff item 3304 9990 by the appellant. It appears that the appellant filed its reply justifying its classification under CTI 3304 9990 but, however, *vide* Order-in-Original No.37/2012 (RF) dated 05.03.2012 the Original Authority confirmed the proposals made in the Show Cause Notice against

which, it appears that the appellant preferred an Appeal before the Commissioner (Appeals)/First Appellate Authority. The First Appellate Authority also having dismissed their appeal *vide* Order-in-Appeal No. 495/2016 (CXA-II) dated 22.12.2016, the present Appeal has been filed before us. The only issue we need to consider is, “whether the Appellant was correct in classifying the disputed Petroleum Jelly – Aloe Vera and Petroleum Jelly – Baby under 33049990?”

5.1 *Per Contra* Shri S. Subramanian, Ld. Special Counsel for the Revenue submits that the appellant bought the already manufactured and duty paid yellow petroleum Jelly in drums/tankers in semi solid state, transferred them into the heating Vessels kept in their premises and after heating to the desired level packed them into smaller unit containers and cleared for export.

5.2 As per Rule 3 of the Cenvat Credit Rule 2004, CENVAT, a manufacturer or producer of final products shall be allowed to take CENVAT credit of duty paid on the inputs used in the manufacture of final products.

5.3 The term 'final products' is defined under CENVAT Rules:

2(h)-"final products" means excisable goods manufactured or produced from inputs, or using input services.

5.4 The term 'manufacture' is defined under Section 2(f) of the Central Excise Act 1944, which includes any process incidental or ancillary to the completion of the manufactured product and also those processes which are specified under the Tariff schedules/section/chapter notes.

5.5 The term 'inputs' is also defined under Rule 2(k) of the CENVAT Rules 2004 to mean all goods (except certain exceptions) used in or in relation to manufacture of final products or all goods (excluding certain goods) used in the factory by the manufacturer of final products. In order to avail CENVAT credit, a manufacturer or producer must use the inputs or input services for the manufacture of final products.

5.6 Regarding the scope of the term 'manufacture' Ld. Special Counsel would submit that the same was the subject matter in the following judicial decisions:

- i) Union of India vs. Delhi Cloth & General Mills, 1977 E.L.T (J 199)=(1963)
- ii) Empire Industries Ltd. vs. U.O.I [1985 (20) E.L.T. 179 (S.C.)]
- iii) CCE, Madras vs. Kutty Flush Doors and Furniture Co. (P) Ltd. [1988 (35) ELT 6]
- iv) CCE vs. Rajasthan State Chemicals Works (199) (55) ELT. 444 (S.C.)]
- v) CCE, Bangalore-II Vs. Osar Chemical Pvt Ltd [2012 (276) E.L.T. 162 (S.C.)]
- vi) CCE, Bombay Vs. SD. Fine Chemicals Pvt. Ltd. (1995 (77) ELT 49 (SC)]
- vii) Brakes India Ltd. Vs. Superintendent of Central Excise [1998 (101) E.L.T. 241 (S.C.)]
- viii) CCE, Jaipur Vs Mahavir Aluminium Ltd. (2007 (212) E..LT. 3 (S.C.)]
- ix) U.O.I. Vs. Babubhai Nylchand Mehta (199) (51) E.L.T. 182 (S.C.)]
- x) Prachi Industries Vs. CCE, Chandigarh [2008 (225) E.L.T. 16 (S.C.)]
- xi) CCE, New Delhi-1 Vs. S.R. Tissues Pvt. Ltd. [2005 (186) ELT 385 (S.C.)]

5.7 The gist of above decisions of the Hon'ble Supreme Court that in order to decide whether a process amounts to manufacture or not, what is relevant is not

the nature of the process but the end-result of that process, i.e., whether the process leads to the emergence of a new and identifiable product having a distinct name, character and use. If such an article emerges from the process, then the process would amount to manufacture.

5.8 In the instant case, the said activity of transferring Yellow Petroleum Jelly (received through tankers or in drums) into vessels, heating to the required temperature to melt, stirring to ensure homogeneity, blowing cold air in an arithmetical progression; to remove air bubbles/water droplets while cooling and filling/stuffing in jars/containers of 60ml/120ml/240ml/480ml do not result in emergence of a new distinct product with different name, character and use. The Petroleum jelly remains as petroleum jelly with same character and use. Therefore, the process of heating, cooling, blowing cold air etc., undertaken by the appellant on the Yellow Petroleum Jelly does not amount to 'manufacture' under Section 2(f) of the Central Excise Act, 1944. Moreover, mere cutting/slitting/packing/repacking from bulk is not

manufacture unless specified so in the Schedule or tariff notes.

5.9 The only process involved here is heating of Yellow Petroleum Jelly by passing the steam through which is solely for the purpose of enabling the filling of the jelly in jars and unit containers.

5.10 The entire processes undertaken by them have not resulted in emergence of a new product with a distinct character, name and use and hence, such processes do not amount to manufacture. The Hon'ble Supreme Court in the case of **Commisioner of Central Excise Vs. Osnar Chemical (P) Ltd.** reported in 2012 (1) TMI 27-Supreme Court held that mere improvement in quality does not amount to manufacture.

5.11 The inputs, i.e. Yellow Petroleum Jelly and Packing Materials used by the appellant in the activity of repacking does not result in a new manufactured final product as defined under Rule 2(h) of the CENVAT Credit Rules, 2004 and therefore, they don't qualify as 'inputs' within the meaning assigned to the term under

Rule 2(k) of the CENVAT Credit Rules, 2004. Consequently, duty paid on such materials is not eligible for CENVAT Credit in terms of Rule 3 of the CENVAT Credit Rules, 2004 as credit is allowed only in such inputs are used for manufacture of final products.

5.12 The meaning of the expression "Manufacture" in terms of CBEC Circular No.129/40/95 dated 29.05.1995 was to include processing of goods for the purpose of grant of input stage rebate of the duty paid on materials used for processing of excisable goods for export and hence, this cannot be applied to determine whether a particular process amounts to 'manufacture' or not, in terms of Section 2(f) of the Central Excise Act, 1994.

5.13 Rule 18 & 19 of CER, 2002 dealing with rebate of duty paid on such excisable goods exported or duty paid on materials used in the manufacture or processing of such exported goods would not be applicable to hold that an activity is under the definition of "manufacture" as per Section 2(f) of the CE Act, 1944.

6. We have heard the rival contentions and perused the documents placed on record; we have also carefully considered the judicial pronouncements referred to/ relied on during the course of arguments.

7. At the outset, we are of the view that the issue regarding classification of the disputed products, namely Petroleum Jelly Aloe Vera and Petroleum Jelly Baby has been decided by us in the appellant's own case for an earlier period, *vide* Final Order No. 40856/2024 dated 15.07.2024, for an earlier period. Relevant observations are as under:

*11. 3304 covers inter alia cosmetics or toilet preparations while Heading 27.12 – HSN covers Petroleum Jelly but however excludes Petroleum Jelly suitable for use for the care of skin. When it is used for skin care, it gives an indication that it may be a medicament but the clear exclusion as of above throws the item under CTH 3304 which clearly covers inter alia, cosmetics. That means, the intention appears to be that as long **it is a cosmetic** and used for skin care, it would fall under CTH 3304 as claimed by the appellant, or else under CTH 2712, as contended by the revenue.*

*12. In the reported case of **Heinz India Ltd. –Vs State of Kerala** [2023 (385) ELT 162 (SC)], although under State VAT Act, Apex Court had an occasion to interpret classification of "medicated talcum powder". Hon'ble Court has referred to a number of its own earlier judgements insofar as the issue of classification is concerned. At paragraph 41 of the said judgement*

Hon'ble Court has indicated a three – step test indicated in **CIENS laboratories** [2013 (295) ELT 3 (SC)]. Further, the court has summarised other tests that have been indicated in different judgements.

Paragraph 41 of the said decision reads as under:

"41. In *CIENS Laboratories (supra)*, the court had indicated a three-step test to determine, if a product were a medicament or not. Other tests have been indicated in different judgments. All these may be summarized as follows :

- (i) When a product contains pharmaceutical ingredients with therapeutic/prophylactic or curative properties, the proportion of the ingredients is not decisive. The curative attributes of the ingredients render it a medicament and not a cosmetic. (*CIENS Laboratories*)
- (ii) A product can be sold without a prescription from a medical practitioner. Yet it does not lead to the conclusion that the sale of over-the-counter products are cosmetics. Several products are sold over-the-counter and are yet, medicaments. (*CIENS Laboratories*)
- (iii) Before adjudicating whether a product is a medicament or not, courts have to consider what the people who use the product understand it to be. **If a product's primary function is "care" and not "cure", it is not a medicament. Cosmetic products are used in enhancing or improving a person's appearance or beauty,** whereas medicinal products are used to treat or cure some medical condition. A product that is used mainly in curing or treating ailments or diseases and contains curative ingredients even in small quantities, is to be branded as a medicament. (*CIENS Laboratories*)

- (iv) *Products cannot be classified as cosmetics solely on the basis of their outward packing. (Meghdoot Gramodyog Sewa Sanasthan, UP. v. Commissioner of Central Excise, Lucknow, [2005] 4 SCC 15 = 2004 (174) E.L.T. 14 (S.C.) = 2004 taxmann.com 182 (SC).*
- (v) *Mixing medical ingredients with other products, or preservatives, does not alter its character as a medicament (Amrutanjan Ltd. v. Collector Central Excise, [1996] 9 SCC 413 = 1995 (77) E.L.T. 500 (S.C.) = 1995 taxmann.com 474 (SC).*
- (vi) *That a license under the Drugs Act is necessary is not a determinative or decisive factor always*
[emphasis added by us]

13. *From the above it is clear that –*
- *the proportion of the ingredients is not decisive;*
 - *prescription is not decisive;*
 - *the primary function is to be looked into; product cannot be classified solely based on their outward packing;*
 - *mixing medical ingredients with other products or preservatives do not alter the character; and*
 - *License under the Drugs Act, even if necessary, is not a determinative or decisive factor always.*

14. *Here, in the case on hand, the scope of litigation is whether the products in question are drug or Cosmetic and the addition of ingredient would result in any change in their classification? The observations by the Hon'ble Supreme Court at paragraph 41 is categoric that the proportion of the ingredients is not decisive and the primary product, if it is care and not cure, then it is a cosmetic.*

15. *The claim of the appellant is that petroleum jelly Baby and petroleum jelly Aloe Vera are intended for application on skin for skin care, to act as a barrier cream to prevent cracking of skin in dry conditions and therefore, the product in question were essentially for taking **care** of Skin.*

16. But however, it is contended by the appellant before us that

- Petroleum Jelly is manufactured from liquid light paraffin, paraffin wax with additives of fragrance gentle Lily, fragrance aloe vera,
- White petroleum jelly was without any additive or perfume;

hence, the presence of perfume/fragrance makes their case for classification of the products in question as 'Cosmetics' and not medicaments and therefore, the classification adopted by them was required to be upheld.

17. It is relevant now to refer to both to Chapter Headings; Chapter 27 of CETA refers to **"Mineral Fuels, Mineral Oils and Products of their distillation; Bituminous Substances; Mineral Waxes."** Entry at 2712 gives the description of goods as "Petroleum jelly, paraffin wax, microcrystalline petroleum wax, ozokerite, etc. obtained by synthesis or by other processes, whether or not coloured". This gives an indication to be covering petroleum jelly per se, in pure form, obtained by synthesis or by other processes, without any additives. Interestingly, Heading 27.12 of HSN at (A) has provided for specific exclusion, as noted earlier, for petroleum jelly suitable for use for the care of skin, which is also indicated to be covered under heading 33.04.

18. Chapter 33 of CETA refers to **"Essential Oils and Resinoids, Perfumery, Cosmetic or Toilet Preparations"**. Entry at 3304 gives the description of goods as "Beauty or make-up preparations and preparations for the care of skin (other than medicaments)....". Further, the Heading 33.04 of HSN at (A) specifically covers '...preparation for the care of the skin '..... Petroleum jelly put up in packings of a kind sold by retail for the care of the skin'.

19. The relevance, purpose and importance of HSN Explanatory Notes has been held to be paramount by the Apex Court on several occasions. We deem it appropriate to refer to some of those decisions relied upon by the Id. Advocate.

20.1. In **COMMISSIONER OF CUS. & C. EX., GOA -Vs - PHIL CORPORATION LTD. [2008(223) ELT 9(SC)]**, the Apex Court has ruled as under :

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28. We have heard the learned counsel for the parties at length and carefully analysed the judgments cited at the Bar. The Central Excise Tariff Act is broadly based on the system of classification from the International Convention called the Brussels' Convention on the Harmonised Commodity Description and Coding System (Harmonised System of Nomenclature) with necessary modifications. HSN contains a list of all the possible goods that are traded (including animals, human hair etc.) and as such the mention of an item has got nothing to do whether it is manufactured and taxable or not.

29. In a number of cases, this court has clearly enunciated that the HSN is a safeguard for the purpose of deciding issues of classification. In the present case, the HSN explanatory notes to Chapter 20 categorically state that the products in question are so included in Chapter 20. The HSN explanatory notes to Chapter 20 also categorically state that its products are excluded from Chapter 8 as they fall in Chapter 20. In this view of the matter, the classification of the products in question have to be made under Chapter 20.

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20.2. In **COLLECTOR OF CUSTOMS, BOMBAY -Vs - BUSINESS FORMS LTD. THR. O.L. 2002 (142) E.L.T. 18 (S.C.)**, it was held as under:

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2. This Court in Collector of Central Excise, Shillong v. Wood Craft Products Limited [1995 (77) E.L.T. 23] has said : "We are of the view that the Tribunal as well as the High Court fell into the error of overlooking the fact that the structure of the Central Excise Tariff is based on the internationally accepted nomenclature found in the HSN and, therefore, be resolved with reference to the nomenclature indicated by the HSN unless there be an express different intention indicated by the Central Excise Tariff Act, 1985 itself. The definition of a term in the ISI Glossary,

which has a different purpose, cannot, in case of a conflict, override the clear indication of the meaning of an identical expression in the same context in the HSN. In the HSN, block board is included within the meaning of the expression 'similar laminated wood' in the same context of classification of block board. Since the Central Excise Tariff Act, 1985 is enacted on the basis and pattern of the HSN, the same expression used in the Act must, as far as practicable, be construed to have the meaning which is expressly given to it in the HSN when there is no indication in the Indian Tariff of a different intention." **Clearly, therefore, the HSN Explanatory Notes are entitled to far greater consideration than the Tribunal has given there.**

3. The Tribunal has also said that the Collector (Appeals) had not relied upon the HSN Explanatory Notes. That was clearly an oversight of the Tribunal because its order says, earlier, thus : "The Collector (Appeals) held that the photographic apparatus, as has been imported, for making printing blocks were excluded from Chapter Heading 84.38 vide Explanatory Notes to CCOM at Page 1288."

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20.3 In **O.K. PLAY (INDIA) LTD. - Vs - COMMISSIONER OF C. EX., DELHI-III, GURGAON - 2005 (180) E.L.T. 300 (S.C.)**, the Court held as under :

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6. Before dealing with the issue of classification, certain points are required to be clarified. 7. In the case of *A. Nagaraju Brothers v. State of Andhra Pradesh* reported in [1994 (72) E.L.T. 801], it has been held by this Court that no one single universal test can be applied for correct classification. There cannot be a static parameter for correct classification. 8. Further, the scheme of the Central Excise Tariff is based on Harmonized System of Nomenclature (for short "HSN") and the explanatory notes thereto. Therefore, HSN along with the explanatory notes provide a safe guide for interpretation of an Entry.

[emphasis added by us]

21. Viewed thus, explanatory notes are very much crucial insofar as deciding an issue regarding classification is concerned, it cannot be ignored. Thus, the classification with due support of the explanatory notes is required to be adopted. Here, we find that the same specifically 'does not include' petroleum jelly used for skin care and hence, that cannot be ignored since there itself it is suggested the heading, as 3304.

22. In the light of the above discussions, we are of the view that the products in question viz, petroleum jelly – Baby and petroleum jelly – Aloe Vera are those meant exclusively for the care of skin, petroleum jelly meant for skin care specifically excluded from CTH 2712 and therefore, they are cosmetics which are correctly classifiable under CTH 3304. Hence, the appellant should succeed.

8. Further, we do not find any deviating fact/s being placed on record by the Revenue for us to take a different view as against our view in the earlier order in the appellant's own case. Nor do we find any order/judgement of higher judicial fora against our order, whereby our earlier order is reversed or held to be bad in law. Nor has the Revenue placed on record order of stay of our earlier order. In view of the above, we do not see any reasons to deviate from our earlier order, although for an earlier period, decided *vide* the above final order and hence, the impugned order cannot sustain; the same is accordingly set aside.

9. In the result, the appeal stands allowed with consequential benefits if any, as per law.

(Order pronounced in open court on 09.06.2025)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)