

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

REGIONAL BENCH - COURT NO. I

EXCISE MISCELLANEOUS APPLICATION No. 85350 of 2024
(On behalf of Appellant)

In

EXCISE APPEAL No. 89306 of 2014

(Arising out of Order-in-Original No. 02/RN/COMMNR/M-II/2014-15 dated 30.06.2014 passed by Commissioner of Central Excise, Mumbai-II, Mumbai.)

Bharat Petroleum Corporation Limited

.....Appellants

Mumbai Refinery, Mahul
Mumbai – 400 074.

VERSUS

Commissioner of Central Excise

.....Respondent

Mumbai-II Commissionerate
9th Floor, Piramal Chambers, Jijibhoy Lane,
Lalbaug, Parel, Mumbai - 400

WITH

EXCISE APPEAL No. 89309 of 2014

(Arising out of Order-in-Original No. 02/RN/COMMNR/M-II/2014-15 dated 30.06.2014 passed by Commissioner of Central Excise, Mumbai-II, Mumbai.)

M. VENUGOPAL

.....Appellants

DGM – Finance (Taxation),
Bharat Petroleum Corporation Ltd.
Mumbai Refinery, Mahul, Mumbai – 400 074.

VERSUS

Commissioner of Central Excise

.....Respondent

Mumbai-II Commissionerate
9th Floor, Piramal Chambers, Jijibhoy Lane,
Lalbaug, Parel, Mumbai - 400

AND

EXCISE MISCELLANEOUS APPLICATION No. 85350 of 2024

In

EXCISE APPEAL No. 89310 of 2014

(Arising out of Order-in-Original No. 02/RN/COMMNR/M-II/2014-15 dated 30.06.2014 passed by Commissioner of Central Excise, Mumbai-II, Mumbai.)

H.S. PARANJAPE

.....Appellants

General Manager (Finance),
Bharat Petroleum Corporation Ltd.
Mumbai Refinery, Mahul, Mumbai – 400 074.

VERSUS

Commissioner of Central Excise

Mumbai-II Commissionerate
9th Floor, Piramal Chambers, Jijibhoy Lane,
Lalbaug, Parel, Mumbai - 400

.....Respondent**AND****EXCISE APPEAL No. 89311 of 2014**

(Arising out of Order-in-Original No. 02/RN/COMMNR/M-II/2014-15 dated 30.06.2014 passed by Commissioner of Central Excise, Mumbai-II, Mumbai.)

M.S. IYER

Sr. Manager (Excise),
Bharat Petroleum Corporation Ltd.
Mumbai Refinery, Mahul, Mumbai – 400 074.

.....Appellants*VERSUS***Commissioner of Central Excise**

Mumbai-II Commissionerate
9th Floor, Piramal Chambers, Jijibhoy Lane,
Lalbaug, Parel, Mumbai - 400

.....Respondent**APPEARANCE:**

Shri Bharat Raichandani, Advocate for the Appellants
Shri Arvind K Singh, Special Counsel of the Respondent

CORAM:**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)****HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)****FINAL ORDER NO. A/85967-85970/2024**

Date of Hearing: 13.05.2024

Date of Decision: 12.09.2024

PER : M.M. PARTHIBAN

These appeals have been filed by M/s Bharat Petroleum Corporation Limited (BPCL), Mumbai Refinery, Mahul, Mumbai and S/Shri H.S. Paranjape, General Manager (Finance), M. Venugopal, Deputy General Manager (Finance-Taxation) and M.S. Iyer, Senior Manager (Excise), all of them are employees of BPCL (herein after, referred together as 'the appellants'), assailing Order-in-Original No. 02/RN/COMMNR/M-II/2014-15 dated 30.06.2014 (herein after, referred to as 'the impugned order') passed by Commissioner of Central Excise, Mumbai-II, Mumbai.

2. The miscellaneous applications being No. E/Misc./85388/2024 and No. E/Misc./85350/2024 have been filed by the Revenue seeking change in the name and address of the respondent to "Commissioner of Central Goods & Service Tax and Central Excise, Navi Mumbai" having the office of the Commissionerate at the address "16th Floor, Satra Plaza, Sector 19-D, Palm Beach Road, Vashi, Navi Mumbai-400 705", due to change in the territorial jurisdiction after introduction of GST regime and as the appellants-assessee falls in their jurisdiction. As the revised name and address of the respondent correctly reflect the revised jurisdictional departmental authorities under whose jurisdiction the appellants-assessee is functioning for the purpose of Central Excise, these miscellaneous applications are allowed. Registry is directed to carry out the necessary changes for record purpose.

3.1 Briefly stated, the facts of the case are that the appellants herein is, *inter alia*, engaged in the manufacture and sale of petroleum products obtained from their petroleum refinery located at Mahul, Mumbai. For this purpose they are duly registered with jurisdictional Central Excise department with Registration No. AAACB2902MX036. During the above manufacturing process by distillation of crude petroleum, a number of excisable goods emerge and 'Propylene (propene)' is one such product, the classification of which under the Central Excise Tariff is disputed in the present case.

3.2 Petroleum is a complex mixture of organic liquids called crude oil and natural gas, which occurs naturally in the ground and was formed millions of years ago. An oil/petroleum refinery is an organised and coordinated arrangement of manufacturing processes designed to produce physical and chemical changes in crude oil to convert it into everyday products like petrol, diesel, lubricating oil, fuel oil and bitumen etc.. As crude oil comes from the well it contains a mixture of hydrocarbon compounds and relatively small quantities of other materials such as oxygen, nitrogen, sulphur, salt and water. In the refinery, most of these non-hydrocarbon substances are removed and the oil is broken down into its various components, and blended into useful products.

3.3 Every petroleum refinery begins with the separation of crude oil into different fractions by distillation. The fractions are further treated to convert

them into mixtures of more useful saleable products by various methods such as cracking, reforming, alkylation, polymerisation and isomerisation. These mixtures of new compounds are then separated using methods such as fractionation and solvent extraction. Impurities are removed by various methods, e.g. dehydration, desalting, sulphur removal and hydrotreating. As crude oil is a mixture of hydrocarbons with different boiling temperatures, it can be separated by distillation into groups of hydrocarbons that boil between two specified boiling points. *Atmospheric distillation* takes place in a distilling column at or near atmospheric pressure. The crude oil is heated to 350 - 400°C and the vapour and liquid are piped into the distilling column. To recover additional heavy distillates from the residue from atmospheric distillation, it may be piped to a second distillation column where the process is repeated under vacuum, called *vacuum distillation*. This allows heavy hydrocarbons with boiling points of 450°C and higher to be separated without them partly cracking into unwanted products such as coke and gas. One of the intermediate product from such vacuum distillation column is *Vacuum Gas Oil* (also known as Waxy). Such Vacuum Gas Oil is further processed in fluid catalytic cracking units. One of the product that emerges from this process is Liquified Petroleum Gas which primarily consists of Propane, Propylene (C3 hydro carbons) and Butane and Butylene (C4 hydro carbons).

3.4 The appellants were clearing the Propylene/Propene feed stock under the broad category Acyclic Hydrocarbons by classifying the said product under Central Excise Tariff Item (CETI) 2902 9090 attracting Central Excise duty at 12% adv., Since 01.03.1994, among 34 different products manufactured in their refinery, Propylene/Propene feed stock is one such product manufactured and cleared for home consumption.

3.5 On the basis of audit/investigation conducted at the Mahul refinery of the appellants, the Department had noticed that the goods declared as 'Propylene/Propene-PP feed stock' are being incorrectly classified as the propylene of less than 90% purity which are rightly classifiable under CETI 2711 1400 and attract central excise duty at 14% adv. Accordingly, the department had initiated show cause proceedings by issue of SCN dated 07.04.2014, proposing for demand of differential duty by invoking extended period under Section 11A(1) of the Central Excise Act, 1944 along with applicable interest, imposition of penalty on the appellants under Section

11AC *ibid* read with Rule 26 of Central Excise Rules, 2002, for confiscation of impugned goods cleared during the disputed period of March, 2009 to January, 2014.

3.6 The SCN dated 07.04.2014 was adjudicated by the original authority in Order-in-Original dated 30.06.2014 by re-classifying the product as proposed in the SCN, confirming the demand of central excise duty under Section 11A of the Central Excise Act, 1944 along with interest and imposed penalty on the appellant company under Section 11AC as well as on other appellants under Rule 26 *ibid*. However, he did not confiscate the impugned goods which have been cleared during the disputed period, as the same was not available. Being aggrieved with the impugned order dated 30.06.2014, the appellants have filed these appeals before the Tribunal.

4. We have heard both sides and perused the case records and additional paper books submitted in this case by both sides.

5.1 The issue involved herein is to decide the classification of 'Propylene/Propene-PP feed stock' manufactured by the appellants as to (i) whether, the same merits classification under CETI 2902 9090 as claimed by the appellants; or, is it classifiable under CETI 2711 1400 as determined by the learned Commissioner in the impugned order, for deciding on the appropriate levy of Central Excise duty, in respect of such goods cleared during the disputed period; and (ii) whether demand of duty by invoking extended period under Section 11A of the Central Excise Act, 1944 and imposition of penalty under Section 11AC *ibid* is legally sustainable?

5.2 In order to address the above issue of classification of manufactured goods, we would like to refer the relevant legal provisions contained in Section 3 of the Central Excise Act, 1944; the Central Excise Tariff Act, 1975 and rules framed thereunder for consideration of proper and appropriate classification of the subject goods under dispute.

CENTRAL EXCISE ACT, 1944

"Section 3. Duties specified in First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 to be levied. —

(1) There shall be levied and collected in such manner as may be prescribed, -

(a) a duty of excise to be called the Central Value Added Tax (CENVAT) on all excisable goods (excluding goods produced or manufactured in special economic zones) which are produced or manufactured in India as, and at

the rates, set forth in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(b) a special duty of excise, in addition to the duty of excise specified in clause (a) above, on excisable goods (excluding goods produced or manufactured in special economic zones) specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) which are produced or manufactured in India, as, and at the rates, set forth in the said Second Schedule.

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CENTRAL EXCISE TARIFF ACT, 1985

Duties specified in the First Schedule and the Second Schedule to be levied

2. *The rates at which duties of excise shall be levied under the Central Excise Act, 1944 (1 of 1944) are specified in the First Schedule and the Second Schedule.*

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FIRST SCHEDULE

[See Section 2]

GENERAL RULES FOR THE INTERPRETATION OF THIS SCHEDULE

Classification of goods in this Schedule shall be governed by the following principles :

1. *The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.*

2. (a) *Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.*

(b) *Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.*

3. *When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows :*

(a) *the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the*

items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

- (b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.*
- (c) when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.*

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GENERAL EXPLANATORY NOTES

1. *Where in column (2) of this Schedule, the description of an article or group of articles under a heading is preceded by "-", the said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading. Where, however, the description of an article or group of articles is preceded by "--", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-". Where the description of an article or group of articles is preceded by "---" or "----", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-" or "--".*

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5.3 From plain reading of the above legal provisions, it transpires that in order to determine the appropriate duties of excise payable on any manufactured goods, one has to make an proper assessment of the goods for its correct classification under the First Schedule to Central Excise Tariff Act, 1985 (for short referred to as 'the Act of 1985') in accordance with the provisions of the such Act by duly following the General Rules for Interpretation (GIR) and the General Explanatory notes (GEN) contained therein. The First Schedule to the Act of 1985 specifies various categories of goods in a systematic and well-considered manner, in accordance with an international scheme of classification of internationally traded goods, i.e., 'Harmonized Commodity Description and Coding System' (HS). Accordingly, goods are to be classified taking into consideration the scope of headings / sub-headings, related Section Notes, Chapter Notes and the General Rules for the Interpretation (GIR) of the First Schedule to the the Act of 1985. Rule 1 of the GIR provides that the classification of goods shall be determined according to the terms of the headings of the tariff and any relative Section notes or Chapter notes and thus, gives precedence to this

while classifying a product. Rules 2 to 6 provide the general guidelines for classification of goods under the appropriate sub-heading. In the event of the goods cannot be classified solely on the basis of GIR 1, and if the headings and legal notes do not otherwise require, the remaining Rules 2 to 6 may then be applied in sequential order. Further, while classifying goods, the foremost consideration is the 'statutory definition', if any, provided in the Act of 1985. In the absence of any statutory definition, or any guideline provided by HS explanatory notes, the trade parlance theory is to be adopted for ascertaining as to how the goods are known in the common trade parlance for the purpose of dealing between the parties.

6.1 In order to determine the proper excise duty payable on the manufactured goods, the goods so manufactured are required to have correct classification for the purpose of application of appropriate rate of duty to the particular goods. First Schedule to the Act of 1985 aligned with the Customs Tariff based on the Harmonized System of Nomenclature HSN (at 6 digit level), enlists all excisable goods with unique 8 digit codes. Normally, there is no difficulty in classifying any goods which are being manufactured/produced by assesseees since many years, as earlier the Central Excise officers of the jurisdictional Range and Division of the Commissionerate, use to determine the classification and value of the goods manufactured, in terms of approval given by the Assistant/Deputy Commissioner for 'classification list/declaration' and 'price list/declaration' submitted by the assesseees under Rule 173B of Central Excise Rules, 1944. However, for new items, classification is to be done on the basis of the aforesaid legal provisions including the relevant Section notes and chapter notes of the Act of 1985, Interpretative Rules of the said Act of 1985; HSN explanatory notes; Composition, properties, usage of goods etc. After introduction of Self-Assessment Procedure in 1996 the manufacturer/producer of any goods, except cigarette, is himself required to assess the quantum of duty on the basis of the value determined by him and to determine the rate of duty as per classification of the goods under proper chapter and its suitable heading/sub-heading.

6.2 In the impugned order dated 30.06.2014, learned Commissioner had examined the issues arising from the dispute of mis-classification of the impugned goods and gave specific findings for revising the classification of the disputed goods under CETI 2711 14 00 and for confirmation of adjudged

demands. The relevant paragraphs of the said order is extracted and given below:

"41. The main issue for decision before me is the classification of the product called by M/s. BPCL as "PPFS". I find that upto January, 2014, M/s. BPCL, had classified the said product under Chapter 2902 90 90 of the Central Excise Tariff Act, 1985 (CETA). However, I find that the noticees have admitted that the classification of PPFS under Chapter 2902 90 90, was an error of technical nature and have claimed that its correct classification is under Chapter 2901 29 90 of CETA. However, the Department's contention is that its correct classification is under Chapter 2711 14 00.

42. I find that during investigation, it was revealed that the product PPFS is in fact "propylene/ propane", predominantly, which is not disputed and is an admitted fact. For the competing claims - Chapter 2901 29 90 or 2711 14 00, I have carefully gone through Chapter 27 and Chapter 29 of CETA. On going through Chapter 27, I find Chapter 2711 as under:

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43. From the above, I find that it is clear that both 2711 14 00 and 2901 22 00 specifically mention the product "propylene". The question is what distinguishes 'propylene' classifiable in Chapter 27 from the one classifiable in Chapter 29.

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44.....I find that Shri Prabhune has stated that: the structural formula of Propylene/propene is CH₃-CH=CH₂- i.e. C₃H₆; that Propylene/Propene is a straight chain hydrocarbon containing a single, 'double bond' and as it does not contain a cyclical ring in its molecular structure [as in case of cyclical hydrocarbons] it is an acyclic hydrocarbon. He further stated that **Propylene/Propene obtained from crude oil refining processes at their BPCL refinery plant at Mumbai is a refinery grade propylene [RGP]; that the purity of the RGP obtained at its Mumbai BPCL refinery plant is in the range of 50% and 75% thereabout as the Mumbai refinery, with the present facilities available, the Propylene /Propene manufactured cannot have purity of above 75%; that, though the said product, as per their production records is referred to as Propylene, the product Propylene in their marketing/sale records is referred to as 'PPF' (Polypropylene Feedstock).**

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46. I have also gone through the Certificate of Quality, listed in Annexure-A to the show cause notice as Ex.5. These are test reports of the noticee's own laboratory. Therein, I find that the test reports are pertaining to product C₃ (Propylene), giving composition of the product, where the percentage of propylene is shown the varying between 64% to 78.99%. There are other components in this product i.e. As per test report No. C₃/1307091 dated 16.11.2013, total C₂ 0.05%, propylene 77.07%, propane 22.72%, Total C₂ 0.16%.

47. For deciding the classification, I have also carefully gone through the Chapter Notes of Chapter 27 and Chapter 29. I have also gone through the Explanatory Notes to the Harmonized Commodity Description and Coding System (HSN), Vol.1, Chapter 1-29. In the HSN, I find that at page 220, covering Chapter head 2711, it is mentioned as "They include, in particular, the following gases, whether or not liquefied:", then at Sr. No. III, of the said Chapter head, it is mentioned as **"Propene (propylene) less than 90% pure (Propene not less than 90% pure falls in heading 29.01)"** Lastly, under this heading, it is mentioned as follows: **"The heading does not cover: (a) Separate chemically defined**

hydrocarbons (other than methane and propane) in a pure or commercially pure state (heading 29.01). (As regards such hydrocarbons with added odoriferous substances, see the General Explanatory Note to Chapter 29, Part(A), fifth paragraph. For ethane, ethylene, propene butane, butenes and butadienes, **there are specific purity criteria as indicated in paragraphs II, III, IV and V above.)**". (emphasis supplied). Then at page 332, under Chapter 29.01, at (B) (1)(a)(ii), it is given as **"Propene (Propylene) (C₃H₆).** Colourless, highly inflammable gas which is an asphyxiant.

To fall in this heading, propene (propylene) must have a purity of 90% or more by volume. Propylene of lower purity is excluded (heading 27.11)"

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51. In view of the discussion above, it is clear that HSN is a safe guide for the purpose of deciding the issues of classification in case of dispute. On going through the HSN, it is clear that the distinguishing factor of 'propylene' between Chapter 27 and Chapter 29, is **'purity criteria'**. The HSN, clearly and unambiguously provides that : **propylene less than 90% pure are covered under head 2711; separate chemically defined hydrocarbons in pure or commercially pure state fall under heading 29.01; there are specific purity criteria for deciding the classification; for propylene to fall under 29.01, it must have a purity of 90% or more; propylene of lower purity is excluded from 29.01.**

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55. In their defence, the noticee have submitted that they were under a bonafide belief that the classification advised by the department since 1994 is correct. As discussed in the para above, there is no evidence of noticee having filed classification for the product "PPF [5009], hence the question of department having advised the noticee does not arise at all. Moreover, no evidence of **approval of the classification list** said to have been filed has been given by the noticee. As regards bona fide belief, Hon'ble CESTAT, in the case of Shilpa Printing Press 2013 (297)ELT 417, at para 26 has observed "whether there was a bona fide belief for the assessee for non-payment of duty on a particular product, is essentially a question of fact to be decided on the basis of materials placed on record in this regard. **Undisputedly, once the department disclosed suppression of facts, the same can be countered by the assessee with the plea of bona fide belief. However, in such cases, the burden lies on the assessee to place on record the necessary materials in support of such claim.**" It was further held that **"The occasion to have bona fide belief can arise in case the assessee had harboured any doubt about their dutiability and thereafter on its efforts to ascertain the legal position in that regard, he was armed with necessary material to contend that there was no dutiability in respect of such product.**" (Emphasis supplied)

56. In the case at hand, the noticee have not placed any material record to establish their bona fide. The feeble attempt by saying that they had filed classification list 20 years ago holds no ground as discussed above. I find that the noticee have not placed any material on record to establish their bona fide so their this plea cannot be accepted. Further, their own refinery, at Kochi was manufacturing 'propylene', reportedly having 'propylene' purity of above 90% was classified under 2901 22 00. In the face of this fact, it cannot be said that they were not aware about the correct classification.

57. I further find that the assesseees are now working under self assessment scheme. Under self assessment, the onus is on the assessee to certify the correctness of all the information furnished in the returns. Hon'ble CESTAT, in the case of Lear Automotive reported at 2012(286)ELT 558, at para 29.1, has held". With the introduction of the assessment scheme, the onus is on the assessee to determine his tax liability correctly and discharge the same.

ORDER

78. I hold that the product 'Propylene/Propene' (shown in CE invoices as 'PPF') manufactured and cleared by the assessee is classifiable under Tariff item no. 2711 14 00 of the CETA.

79. I confirm the demand and order recovery, from M/s. BPCL, of the Central Excise duty amounting to Rs 57,67,41,911/- (Rs. Fifty seven crores sixty Seven lakhs forty one thousand nine hundred eleven) (Rs. 55,99,43,868/- (BED) + Rs. 1,11,98,765/- (Ed. CESS) + Rs. 55,99,278/- (S.H.E.)) (as detailed in the Annexure – B attached to show Cause Notice)) for the period from March 2009 to January 2014 under the provisions of Section 11A (5) (erstwhile proviso to Section 11A (1)) of the Central Excise Act, 1944.

80. I order recovery of interest from M/s. BPCL, under the provisions of Section 11AA (erstwhile Section 11AB) of the Central Excise Act, 1944.

81. I impose penalty of Rs. 23,24,90,025/- for period March, 2009 to 7-4- 2011, under Section 11AC of the Central Excise Act, 1944 and penalty of Rs. 17,21,25,943/- for period 8-4-2011 to Jan, 2014, under Section 11AC (1)(b) of Central Excise Act, 1944 on M/s. BPCL. Total penalty imposed is Rs 40,46,15,968/- (Rupees Forty crores forty six lakhs fifteen thousand nine hundred sixty eight only).

82. I hold that the goods that is 'Propylene/Propene' valued at Rs. 1770.78 crore cleared without payment of the due Central Excise duty under Tariff item No. 2902 9090, are liable for confiscation. However, as the goods are not available for confiscation, the same cannot be confiscated and accordingly I do not impose any redemption fine.

83. I hold that the revised and enhanced CE duty @14% adv, under ch 2711 14 00, paid by the assessee w.e.f 01.02.2014 'Under Protest', should be considered as the normal, regular and appropriate CE duty paid on all clearances of Propylene made from 01.02.2014 to 31.03.2014 and the 'Protest' lodged under its letter dated 04.03.2014, stands vacated.

84. I impose penalty of Rs. 5000/- each, on Shri M.S. Iyer, Shri H.S. Paranjape and Shri M. Venugopal, under rule 26 of the Central Excise Rules, 2002."

6.3 On perusal of the impugned order, it transpires that learned Commissioner had decided the classification of the disputed goods, primarily, on the basis of the purity of the propylene/propane, as reflected in the test report dated 16.11.2013 and on the basis of the description that the goods are of 'refinery grade'. Further, he had also relied upon the statements given by the persons working in the appellants' company, to come to the conclusion that the impugned goods produced and the appellants refinery plant is having purity in the range of 50% to 75%.

6.4 We have carefully perused the facts of the case, particularly the details of the test report as mentioned in the paragraph 46 of the impugned order,

wherein it is stated the percentage of propylene is varying between 64% to 78.99%. We find that the said test report is for determination of the composition of the product conducted by the NABL accredited laboratory as per testing method of 'ASTM D 2163'. The relevant extract of the 'ASTM D 2163' Standard Test Method for determination of Hydrocarbons in Liquefied Petroleum (LP) Gases and Propane/Propene mixtures by Gas Chromatography is given below:

"1.Scope

1.1 This test method covers the quantitative determination of individual hydrocarbons in liquefied petroleum (LP) gases and mixtures of propane and propene, excluding high-purity propene in the range of C1 to C5. Component concentrations are determined in the range of 0.01% to 100% by volume.

1.2 This test method does not fully determine hydrocarbons heavier than C5 and non-hydrocarbon materials, and additional tests may be necessary to fully characterize an LPG sample.

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4. Summary of Test Method

4.1 An LPG sample is analyzed via either liquid or gas sampling valves by gas chromatography and compared to corresponding components separated under identical operating conditions from a reference standard mixture of known composition or from use of pure hydrocarbons. The chromatogram of the sample is interpreted by comparing peak retention times and areas with those obtained for the reference standard mixture or pure hydrocarbons."

The specific purity criteria adopted in the impugned order for deciding the classification for 'propylene' in order to fall under heading 29.01 is that it must have a purity of 90% or more; and propylene of lower purity is excluded from heading 29.01 and is covered under heading 27.11. If we carefully see the testing method adopted and test report, it only provides for computation of the product being tested in terms of percentage to total weight i.e., quantification part alone, and no specific purity percentage has been given. Hence, we do not find the presence of any basic fact regarding the purity of propylene/propene determined or provided in such test report, more so when such test method exclude high-purity propene, for determining the classification of the impugned goods on that basis. It is also of importance to note that chemical purity is the measurement of the amount of impurities found in a sample; it is the quality of a substance being free of anything that contaminates or debases it. Purity is important, because it can be used as an analytical standard to identify or determine the concentration of a substance, in order to decide whether it is separate chemically defined compound.

6.5 In the case before us, the contending classification of imported goods discussed in the impugned order are either under CETI 2902 9090 or CETH 2711 1400 of the First Schedule to the Act of 1985. Further, in the impugned order, learned Commissioner at paragraph 60 has also recorded that in the classification list claimed by the appellants to have submitted to the department, they had classified the impugned goods under CETI 2902.90 and in 2005, there was change in the tariff on account of transition from 6-digit to 8-digit classification code under Central Excise Tariff w.e.f. 28.02.2005 and thus 'propylene' is classifiable under CETI 2901 2200; however the appellants neither changed the classification of the impugned product nor did pay appropriate rate of duty which had caused the present dispute. Thus, in respect of the above classification dispute, it is clear that at the Chapter level itself, there is difference of opinion among the department and the appellants. The dispute in classification therefore lies in the narrow compass of analysis of the appropriate Headings under which the impugned goods are covered as per the Central Excise Tariff and then classifying the impugned product under the corresponding Sub-heading, Tariff Item. Now, we may closely examine the scope of the contending classification for determining correct classification of the impugned goods. The relevant headings and their tariff entries in the First Schedule to the Central Excise Tariff Act of 1985 for contending Chapter headings 2711 and 2902 are extracted as below:

"CHAPTER 27

**MINERAL FUELS, MINERAL OILS AND PRODUCTS OF THEIR DISTILLATION;
BITUMINOUS SUBSTANCES; MINERAL WAXES**

Notes :

- 1. *This Chapter does not cover :*
 - (a) *separate chemically defined organic compounds other than pure methane and propane which are to be classified in heading 2711;*
 - (b) *medicaments of heading 3003 or 3004;*
 - (c) *mixed unsaturated hydrocarbons of heading 3301, 3302 or 3805.*

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Tariff Item	Description of goods
(1)	(2)
2711	Petroleum gases and other gaseous hydrocarbons
	- <i>Liquefied :</i>
2711 11 00	-- Natural gas
2711 12 00	-- Propane
2711 13 00	-- Butane
2711 14 00	-- Ethylene, propylene, butylene and butadiene

Tariff Item	Description of goods
	- <i>In gaseous state :</i>
2711 21 00	-- Natural gas
2711 29 00	-- Other"

And

"CHAPTER 29
ORGANIC CHEMICALS

Notes:

1. *Except where the context otherwise requires, the headings of this Chapter apply only to :*

(a) separate chemically defined organic compounds, whether or not containing impurities;

(b) mixtures of two or more isomers of the same organic compound (whether or not containing impurities), except mixtures of acyclic hydrocarbon isomers (other than stereoisomers), whether or not saturated (Chapter 27);

XX XX XX XX XX

2. *This Chapter does not cover :*

(a) goods of heading 1504 or crude glycerol of heading 1520;

(b) ethyl alcohol (Chapter 22);

(c) methane or propane (heading 2711);

Tariff Item	Description of goods
(1)	(2)
	I. HYDROCARBONS AND THEIR HALOGENATED, SULPHONATED, NITRATED OR NITROSATED DERIVATIVES
2901	Acyclic hydrocarbons
2901 10 00	- Saturated
	- <i>Unsaturated:</i>
2901 21 00	-- Ethylene
2901 22 00	-- Propene (propylene)
2901 23 00	-- Butene (butylene) and isomers thereof
	
2901 29	-- <i>Other :</i>
2901 29 10	--- Acetylene, whether or not in dissolved conditon
2901 29 20	--- Heptene (Heptylene)
2901 29 90	--- Other
2902	Cyclic hydrocarbons
	- Cyclanes, cyclenes and cycloterpenes :
2902 11 00	-- Cyclohexane
2902 19 00	-- Other
...	
2902 90	- <i>Other :</i>
2902 90 10	--- Dipentene
...	...
2902 90 90	--- Other"

It could be seen that by applying the GIR 1, the position is made clear that Chapter Heading 27.11 covers within its scope and ambit, mainly of Petroleum gases and other gaseous hydrocarbons. However, separate chemically defined organic compounds, other than pure methane and propane, are not covered under chapter 27 and are to be classified under chapter 29. Further, separate chemically defined organic compounds, whether or not containing impurities remain classified under Chapter 29. Moreover, it is only pure methane and propane of chapter 27 which are excluded from the scope of coverage of chapter 29 and not propene (propylene). Thus, the distinguishing factor for classification of the impugned product i.e., propylene/propene is to determine whether these are separate chemically defined compounds and further its purity, as per standards such as BIS or other laid down norms by Indian Institute of Petroleum, which is one of the constituent laboratories under the umbrella of Council of Scientific & Industrial Research (CSIR), which has facilities for testing ASTM/IP/UOP/BIS standards for analyzing and evaluating of petroleum products.

6.6 We find that the impugned order has not examined all the aforesaid aspects for arriving at a proper classification of the impugned goods. It is not the case of the Revenue, that Propene/propylene is a new product that was manufactured by the appellants and as such its classification as per self-assessment made by the appellants are mis-classified. It is a fact on record that right from the beginning of the petroleum refinery operations of the appellants' at the Mahul refinery, Propene/propylene was being manufactured and were cleared for home consumption. Hence, the classification of the product, initially filed under a classification declaration required in terms of erstwhile Rule 173B of Central Excise Rules, 1944, which is a procedure prescribed for assessment by the departmental authorities cannot be discredited by the learned Commissioner under the pretext that there is no approved copy of classification list, in original, was produced by the appellants before him.

7. We also note that the impugned order has relied upon the HS explanatory notes of the WCO, to state that propylene having purity of 90% or more, shall be classified heading 29.01 and propylene of less than 90% purity is classified under heading 27.11. In order to examine this aspect, we would like to examine the HS explanatory notes of the WCO, which describe

in detail the scope and coverage of goods under a particular classification. The extract of HS classification is given below:

Harmonized Commodity Description and Coding System

Explanatory Notes

Annex A

27.11 - Petroleum gases and other gaseous hydrocarbons.

- Liquefied :

2711.11 - - Natural gas

2711.12 - - Propane

2711.13 - - Butanes

2711.14 - - Ethylene, propylene, butylene and butadiene

2711.19 - - Other

- In gaseous state :

2711.21 - - Natural gas

2711.29 - - Other

This heading covers **crude** gaseous hydrocarbons obtained as natural gases or from petroleum, or produced chemically. **Methane** and **propane** are, however, included even when pure.

These hydrocarbons are gaseous at a temperature of 15 °C and under a pressure of 1,013 millibars (101.3 kPa). They may be presented under pressure as liquids in metal containers and are often treated, as a safety measure, by the addition of small quantities of highly odoriferous substances to indicate leaks.

They include, in particular, the following gases, whether or not liquefied :

- I. Methane and propane, whether or not pure.
- II. Ethane and ethylene less than 95 % pure. (Ethane and ethylene not less than 95 % pure fall in **heading 29.01.**)
- III. Propene (propylene) less than 90 % pure. (Propene not less than 90 % pure falls in **heading 29.01.**)
- IV. Butane containing less than 95 % of n-butane and less than 95 % of isobutane. (Butane containing not less than 95 % of n-butane or isobutane falls in **heading 29.01.**)
- V. Butenes (butylenes) and butadienes less than 90 % pure. (Butenes and butadienes not less than 90 % pure fall in **heading 29.01.**)
- VI. Intermixtures of propane and butane.

The above percentages are calculated by reference to volume for gaseous products and to weight for liquefied products.

The heading **does not cover** :

- (a) Separate chemically defined hydrocarbons (**other than** methane and propane) in a pure or commercially pure state (**heading 29.01**). (As regards such hydrocarbons with added odoriferous substances, see the General Explanatory Note to Chapter 29, Part (A), fifth paragraph. For ethane, ethylene, propene, butane, butenes and butadienes, there are specific purity criteria as indicated in paragraphs II, III, IV and V above.)

In careful reading of the above HSN explanatory notes, it is understood that heading 2711 covers under its scope liquified petroleum gases and other gaseous hydrocarbons as well as such products in gaseous state. Liquified propylene is specifically covered under sub-heading 2711.14 and in gaseous state is covered under 2711.29. However, if such propylene is in a pure state or commercially pure state, being separate chemically defined

hydrocarbons, then the same is classifiable under heading 29.01. The records of the case also show that the customers of the appellants have placed orders for the product as 'Poly Propylene Feed Stock', 'Propylene' as these are known commercially in the trade for use in their further manufacture of chemicals. Therefore, as observed by us, the determining factor for classification of the propylene/ propene manufactured by the appellants would be determination of the 'purity' level and whether it is a 'separate chemically defined compound' or not. The test reports stated to have been examined by the learned Commissioner does not throw light on the above factual aspects for determining proper classification of the impugned goods. Therefore, we are of the considered view that the findings of the learned Commissioner is faulty and does not help in determining proper classification of the impugned goods.

8.1 We also find that some of the general principles of classification of goods, laid down by the Hon'ble Supreme Court are as follows:

(i) Classification is to be based on statutory definition, if any, and in the absence thereof on trade or common parlance, [*CCE vs. Fusebase Eltoto Ltd.* 67-E.L.T 30 (SC); *Indian Cable Co. Ltd. Vs. CCE* - 74 E.L.T. 22 (SC); *Metagraphs Pvt. Ltd Vs. CCE*-88 E.L.T 639 (SC); *United Copiex (India) Pvt. Ltd. vs. CST* - 94 E.L.T. 28 (SC)].

(ii) It is an accepted principle of classification that the goods are to be classified according to their popular meaning as understood in the commercial sense and not as per the scientific/technical meaning [*Plasmac Machine Mfg. Co. Pvt. Ltd. Vs. CCE* 51 E.L.T 161 (SC)]. However, where the tariff heading/sub-heading itself uses highly scientific and technical terms, the scientific/technical meaning shall take precedence over the commercial/trade parlance [*UOI vs. Sahney Steel and Press Works Ltd.* 58 E.L.T 38 (SC)]. Also, classification according to commercial nomenclature or trade understanding should be avoided where the statutory context in which the tariff entry appears requires otherwise. [*Akbar Badruddin Jiwani vs. Collector of Customs* 47 E.L.T 161 (SC)].

(iii) Normally, classification is to be done with reference to the specific wordings of the headings/sub-headings as mentioned in the tariff. However, where the goods in question are capable of being called by more than one name, the classification is to be done with reference to the most appropriate name and for this purpose, the basic functional/character/use would become more relevant. The functional aspect was considered by the Hon'ble Apex Court in *Atul Glass Industries Ltd. vs. CCE* 25 E.L.T 473 (SC); *Indian Tool Manufacturers vs. CCE* 74 E.L.T 12 (SC); *CCE vs. Kumudam Publication (P) Ltd.* 96 E.L.T 226 (SC).

8.2 We find that the learned Commissioner have not determined the classification on the basis of any such laid down general principles as above,

and had solely relied upon the test report, HSN explanatory notes without due analysis of its relevance to the extent it apply to the tariff classification as per the terms of the headings and any relative Section or Chapter Notes, which have the legal force in determination of the question of proper classification as per General Rules for interpretation of the Central Excise Tariff.

9.1 In the impugned order, duty demands were confirmed by invoking extended period on the ground that the appellants have mis-declared the description of the goods as 'Polypropylene Feed stock (PPF)', instead of declaring the same as 'Propylene/Propene', and failed to discharge the appropriate excise duty with a intention to evade the same. In this regard, we find that the learned Commissioner had held that the appellants were aware of the distinction between the descriptions and have filed the wrong declarations with the Department. However, on the contrary the record of the case indicate that the 'classification list/declaration' in which 34 different products have been described in detail and classified thereon, have been submitted by the appellants to the jurisdictional Range Office of the Central Excise Department, and the same was allotted with serial number 07/93-94 and was duly verified by the Inspector, Central Excise, Range-I, Division-II, Bombay and the jurisdictional Range Superintendent of Central Excise on 31.03.1994. We also find that one of the product declared in the said in classification list is "ACYCLIC HYDROCARBONS – Propylene (Propylene/Propene Feed Stock)". Further, in the various returns filed with the Department, such as E.R-1 monthly return filed during the disputed period, the details of impugned product (P.P. Feed stock) classified under CETI 2901 29 90 along with the opening stock, quantity manufactured, quantity cleared for home consumption, assessable value, rate of duty, duty payable on the actually paid have been provided by the appellants. Further, correspondence exchanged between the appellants and the Department, particularly letter F. No. III/10-202/EA-2000/BPCL/Group E/F/2013 dated 27.11.2013 written by the Superintendent (Audit Group E/F), Audit Section, C. Ex., Mumbai addressed to the appellants, have raised the issue of classification adopted by the appellants under CETI 290129 as incorrect, in terms of the test report and the HSN explanatory notes, requesting the appellants to pay the differential duty along with interest for revising the classification under CETI 2711 1400, in respect of the impugned goods cleared for the last 5 years. In response to such communication, the

appellants vide their letter dated 04.03.2014 had informed that they are revising the classification under CETI 2711 1400 and paying the duty on the rate of 14% adv. under protest. These records clearly prove that the classification of the impugned product was initially approved by the Department under the classification adopted by the appellants, and the issue of misclassification of the impugned product was raised during the audit scrutiny by the department authorities. The periodical returns filed by the appellants before the department authorities, clearly show that all information relating to the production and clearance of the impugned products, were in the knowledge of the Department, including the classification of the product, and there was no suppression of fact or mis-statement in the declaration filed by the appellants. Further, CBIEC's instructions issued vide Circular No. 808/5/2005-CX dated 25.08.2005, clearly state that 8-digit classification code is a technical change adopted in the numbering scheme for Central Excise classification, and all possible assistance to trade industry may be provided by the Department for switching over to such new 8-digit tariff. Hence, the invocation of extended period for confirmation of demand on the ground of willful suppression or mis-statement is not legally sustainable.

9.2 In this regard, we find that Hon'ble Supreme Court have dealt with the issue of invoking extended period in the case of *Collector of Central Excise Vs. Chemphar Drugs & Liniments* – 1989 (40) E.L.T. 276 (S.C.) and held that for invoking extended period for demand of duty, something positive other than mere inaction or failure on the part of the manufacturer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required to be proved before it is saddled with any liability. The relevant paragraphs of the said judgement are extracted below:

"8. *Aggrieved thereby, the revenue has come up in appeal to this Court. In our opinion, the order of the Tribunal must be sustained. In order to make the demand for duty sustainable beyond a period of six months and up to a period of 5 years in view of the proviso to sub-section 11A of the Act, it has to be established that the duty of excise has not been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, before the period of six months. Whether in a particular set of facts and circumstances*

there was any fraud or collusion or wilful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case. The Tribunal came to the conclusion that the facts referred to hereinbefore do not warrant any inference of fraud. The assessee declared the goods on the basis of their belief of the interpretation of the provisions of the law that the exempted goods were not required to be included and these did not include the value of the exempted goods which they manufactured at the relevant time. The Tribunal found that the explanation was plausible, and also noted that the Department had full knowledge of the facts about manufacture of all the goods manufactured by the respondent when the declaration was filed by the respondent. The respondent did not include the value of the product other than those falling under Tariff Item 14E manufactured by the respondent and this was in the knowledge, according to the Tribunal, of the authorities. These findings of the Tribunal have not been challenged before us or before the Tribunal itself as being based on no evidence.

9. *In that view of the matter and in view of the requirements of Section 11A of the Act, the claim had to be limited for a period of six months as the Tribunal did. We are, therefore, of the opinion that the Tribunal was right in its conclusion. The appeal therefore fails and is accordingly dismissed."*

9.3 In view of the above judgement delivered by the Hon'ble Supreme Court, we are of the considered view that the impugned order does not stand the scrutiny of law on the ground of limitation itself and therefore is liable to be set aside.

9.4 We further find that in exercise of the powers under Section 37B of Central Excise Act, 1044 CBEC have issued instructions to field formations for the purpose of maintaining uniformity in application of the law including the matters of classification of goods and levy of duty. Such instructions / guidelines are binding on the departmental authorities and the Courts may compel compliance with such instructions as are for the benefit of the assessee as held by the Hon'ble Apex Court in the case of *British Machinery Supplies Co. Vs. UIO 86 E.L.T. 449 (SC)*, *Ranadey Micronutrients vs. CCE 87 E.L.T. 19 (SC)* *CCE vs. Koreas (India) Ltd 89 E.L.T. 441 SC*. Further, an established practice of classification cannot be changed without cogent reasons, as held in the case of *Collector v. Tata Iron & Steel Co. 13 E.L.T. 113 CEGAT*. The Civil appeal filed by department was dismissed [94 E.L.T. A133 (SC)]. Any change in classification of goods can take effect prospectively only [*CCE. Vs. Cotspun Ltd. 99 ELT 24 (SC)*]. Further, Section 11A empowers the department for re-opening of a decided classification and assessment but re-opening is not permissible on account of mere change of opinion *Shahnaz Arurvedics Vs. CCE 2004 (173) E.L.T. 337(All)*. The

Department appeal against this judgment is dismissed by the Hon’ble Supreme Court.

9.5 Central Board of Excise & Customs (CBEC) had prescribed detailed procedure in respect of verification of the classification declarations filed by the assessees under Circular No. 124/35/95-CX dated 10.05.1995. The said circular is extracted and given below:

Circular No. 124/35/95-CX
dated 10/5/95

F.No. 202/5/95-CX-6

Government of India,

Ministry of Finance

Department of Revenue,

(Central Board of Excise & Customs), New Delhi

Subject: filing of declaration consequent on abolition of Classification List - Instruction regarding

I am directed to invite your attention to the provisions of Rule 173B of Central Excise Rules, 1944, as introduced by Notification No. 11/95-CE (NT) dated the 16th March, 1995.

2. Rule 173B provides for filing of a declaration of goods produced or manufactured by an assessee. In order to secure uniformity and to carry out proper checks in this regard, the following instruction are issued:-

3. Assessee shall file the declaration as per Proforma enclosed with the Range Superintendent in quadruplicate by 15th MaY, 1995 (or within reasonable time thereafter) initially and, thereafter, at the beginning of each financial year. He should file a fresh declaration as and when there is a change in the rate of duty or tariff classification in respect of the goods manufactured by him or whenever a new item is intended to be manufactured and not contained in the declaration already filed. The correctness and completeness of the declaration should be duly certified by the assessee.

4. The Range Superintendent shall acknowledge forthwith the receipt of the declaration and return the 4th copy back to the assessee in lieu of acknowledgment.

5. The Range Superintendent shall then shack the declaration with the goods being manufactured by the assessee and shall also check the previous declaration or the classification list, as the case may be, filed by the assessee. he may also study the manufacturing process and submit the original and duplicate copies of the declaration after retaining the triplicate copy with himself, to the Divisional Assistant Collector alongwith his verification report within 6 (six) weeks of the receipt of the declaration from an assessee. Collector must issue the Instructions that in respect of declaration filed by Non-SSI units, the Range Officer should invariable endorse on the Original and Duplicate copies thereof, a verification certificate to the effect that:

"I have visited the assessee's manufacturing unit on _____ and verified the description of the product(s), studied the manufacturing process and have satisfied myself about the correctness of the classification and applicability of exemption notification declared herein above".

However, in case of SSI Units, no Range Officer shall visit them for verifying the declaration except under specific instruction of the Jurisdictional Assistant Collector.

6. The Assistant Collector shall carefully scrutinize the Declaration and the Superintendent's report thereon. In case the information contained in the declaration is found to be incomplete or incorrect, the Assistant Collector may cause necessary enquiry and also require any person to produce or deliver any document or thing relevant to the enquiry. He may visit the manufacturing unit and also examine any person acquainted with the facts and details of the goods/ manufacturing process in question or with the particulars declared in such documents or other records in the manner provided in Section 14 of the Central Excise and Salt Act, 1944.

7. The Divisional Assistant collector may order provisional assessment in case the declaration is found to be incorrect or incorrect or incomplete or if he is unable to complete inquiries in terms of Rule 9B.

8. The Assistant Collector after being satisfied with the correctness and completeness of the declaration and after concluding whatever enquiry is necessary, shall forward the Duplicate copy of the Declaration to the Collectorate headquarters. he shall also suitably instruct the Range Superintendent within 30 (thirty) days of the receipt of the Declaration in his office.

9. The Ranges Superintendent Shall finalise the assessment in RT - 12 keeping in view the observations/ instructions, received from the Assistant Collector with reference to declarations. Show-cause Notice must be issued in time, wherever necessary.

Sd/-
(Navneet Goel)
Under Secretary to the Govt. of India

Proforma for Filing Declaration under Rule 173B

Original
Duplicate
Triplicate

Quadruplicate

Range _____	Code No. _____	1. Serial Number of the Declaration (to be allotted by the receiving range)
Division _____	Code No. _____	2. Serial Number of the earlier Declaration
Collectorate _____	Code No. _____	
State _____	Code No. _____	3. Whether Amending / superseding declaration already filed.

Manufacturer's Code No. _____

Type of Manufacturer's _____
Code No. _____

1. Name and address of the assessee _____
2. Location of the factory/ warehouse _____
3. Central Excise Registration No. _____
Manufacturer's Code No. _____
4. Particulars of all excisable
goods (including wholly exempted
produced, manufactured, warehoused _____

Sl. No.	Full description of each item of the goods produced manufactured or warehoused including Brand names, if any, together with the description as would appear in the invoice and specifications having a bearing on other classification or the commercial nomenclature	Chapter heading No. & sub-heading No. of the First Schedule to the Central Excise Tariff Act, 1944 under which each goods fall.
(1)	(2)	(3)
Effective rate of duty on which goods are assessable		
Type of duty	Rate of duty leviable on each item	No. & date of the relevant notification (s) if any, having bearing on the applicable rate of duty
(4)	(5)	(6)
No.	Full description of goods showing the detailed specifications, brand / model	Remarks
(1)	(2)	(3)

Declaration

I / We declare that the above particulars are true and correct and complete.

Signature of the Assessee or of the

authorised agent (Rubber Stamp)

Note:

1. Description of goods shall include such details and description also as appear in invoice.
2. List of critical raw materials along with manufacturing process of each item shall be annexed along with the declaration.

From the above detailed instructions, it is clear that erstwhile Rule 173B when the classification list was required to be submitted by the appellants provided for filing of a declaration of goods produced or manufactured by an assessee, upon abolition of the requirement of filing classification list. In order to secure uniformity and to carry out proper checks in this regard, departmental instructions clearly provided that the Range Superintendent shall visit the factory, verify the description of the product and study the manufacturing process, in order to certify the correctness of the classification and applicability of exemption notification benefit, if any. In such a circumstance, when a specified procedure is being followed by the department, the product 'propylene/propene feed stock' being in existence as a part of the Mahul refinery plant of the appellants, cannot be said to have been mis-declared or any information relating to such production and clearance of the impugned products have been withheld with deliberate intention to evade excise duty, more so when periodical ER-1 returns have been filed with the Department.

10. In view of the foregoing discussions and analysis, and on the basis of the judgements of the Hon'ble Supreme Court, we are of the considered view that the classification of the impugned goods have not been properly arrived at on the basis of facts and the legal provisions as applicable under the Central Excise Act, 1944; the rules made thereunder and the Central Excise Tariff Act, 1985. Therefore, the classification of the impugned goods involved in the case and the resultant demand of Central Excise duty, if any, during the normal period is required to be determined on the basis of the facts and evidences with respect to the determining factors and legal provisions, as discussed above in the paragraphs 6.4 to 8.2. Consequently, the confirmation of adjudged demands and imposition of penalty on the appellants, does not sustain and the same is set aside.

11. Therefore, we are of the considered view that the impugned order dated 30.06.2014 classifying imported goods under heading 2711 1400 does not stand the scrutiny of law and therefore it is not legally sustainable. In order to determine the proper classification of the impugned goods as per law, we consider it necessary that the matter should be remanded back to the original authority. Needless to state that sufficient opportunity for personal hearing should be given to the appellants and all relevant data with respect to clearance of the products during the relevant time, including test reports covering the entire clearances etc. and any other additional information that may be submitted by the appellants, shall be taken into consideration by the adjudicating authority during the *de novo* proceedings.

12. In the result, by setting aside the impugned order dated 30.06.2014, we allow the appeals in favour of the appellants, by way of remand.

(Order pronounced in the open court on 12.09.2024)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)