# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# MUMBAI

REGIONAL BENCH - COURT NO. 1

**Customs Cross Objection No. 85718 of 2022**
**in**
**Customs Appeal No. 85996 of 2022**

[Arising out of Order-in-Original No. 15/2021-22/Commr./NS-I/JNCH dated 31.12.2021 passed by the Principal Commissioner of Customs (NS-I), JNCH, Nhava Sheva, Mumbai Customs Zone-II.]

**Commissioner of Customs (NS-I)** **.... Appellant**
**Nhava Sheva Customs Commissionerate-I**
Jawaharlal Nehru Custom House (JNCH)
Nhava Sheva, Taluka Uran, District Raigad
Maharashtra – 400 707.

Versus

**Godrej Industries Limited** **.... Respondents**
Chemical Division,
2nd Floor, Godrej One Building
Pirojshanagar, Eastern Express Highway
Vikhroli, Mumbai, Maharashtra – 400 079.

**APPEARANCE:**

Shri Deepak Sharma, Authorized Representative for the Appellant

Shri T. Vishwanathan along with Shri Akhilesh Kangasia, Miss. Madhura Khandekar, Advocates for the Respondents

**CORAM:**
**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**
**HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/ 86060/2026**

Date of Hearing: 14.05.2026
Date of Decision: 21.08.2026

**Per: M.M. PARTHIBAN**

This appeal has been filed by the Commissioner of Customs (NS-I), JNCH, Nhava Sheva, Mumbai Customs Zone-II (herein after, referred to as "the appellant", for short) in pursuance to Review Order No. 01-R/2022/ CCO/2021-22 dated 29.03.2022 passed by Committee of Chief Commissioners assailing the Order-in-Original No. 15/2021-22/Commr./ NS-I/JNCH dated 31.12.2021 passed by the Principal Commissioner of Customs (NS-I), JNCH, Nhava Sheva, Mumbai Customs Zone-II, in context with show cause proceedings initiated against respondents-importer M/s Godrej Industries Limited, Mumbai.

2.1 Brief facts of the case, leading to this appeal, are summarized herein below:

2.2. The respondents herein is *inter alia* engaged in the manufacture of goods in their factory situated in Burjorji Nagar, Plot No.3, Village Kanorao, Taluka-Vallia, District-Bharuch, Gujarat and having their registered office at Chemical Division, 2ndFloor, Godrej One Building, Pirojshanagar, Eastern Express Highway, Vikhroli, Mumbai. For the purpose of import and clearance of the goods described as 'Dehydol LS1 TH (One Mol Alcohol Ethoxylate 1214)', Dehydol LS2 TH (Two Mol Alcohol Ethoxylate 1214)', from the overseas supplier M/s Thai Exthoxylate Co. Ltd., as well as for import of 'Lauryl Alcohol Ethoxylate 2 Mole LS2 (LAE 2 Mole)', from the overseas supplier M/s Shell Eastern Chemicals, Singapore/Thailand, the respondents had filed various Bills of Entry (B/Es) before the customs authorities at Custom House, Nhava Sheva (17B/Es) and at JNCH, Nhava Sheva (45 B/Es) by classifying the goods under Customs Tariff Item (CTI) 3824 9090/ 3824 9990 and claimed the benefit of 0% Basic Customs Duty (BCD) exemption vide Serial No.449(I) of Notification No.46/2011-Customs dated 01.06.2011, as amended. However, intelligence developed by the Directorate of Revenue Intelligence, Ahmedabad (DRI) indicated that the respondents have mis-classified the imported goods and as per correct classification identified by them under CTI 3402 1300 such imported goods are liable to pay BCD at the rate of 5% vide Serial No.399(I) of said Notification dated 01.06.2011.

2.3 On the basis of the above, DRI had conducted detailed investigation on the case including search of the factory and office premises of the respondents, recording of statements from all persons concerned, resuming various documents and records. The representative samples of imported goods in the factory premises of the respondents were drawn and sent to the Central Excise and Customs Laboratory, Baroda/Vadodara (CRCL). In the rest report dated 22.03.2018, it was stated that the test for presence of Organic Surface-Active Agent was 'positive' and the nature of sample was 'non-ionic', the test for alcohol and ethoxylate was 'positive'.
Further, imported goods available at JNCH, Nhava Sheva vide B/E No.5795002 and 5795026 both dated 30.03.2018 were detained and representative samples drawn from such imports were also forwarded to Central Excise and Customs Laboratory, Vadodara for chemical testing. As per the test report dated 07.06.2018, it is reported that the test for presence of Organic Surface-Active Agent was 'positive' and the nature of sample was 'non-ionic', the test for alcohol and ethoxylate was 'positive'.

2.4 On the basis of aforesaid chemical test reports, other test report of similar goods in the case of M/s BASF India Limited, documents recovered from the respondents, the department had initiated show case proceedings by issue of Show Cause Notices (SCNs) dated 13.08.2019 and 01.10.2020. In the said SCNs, it was proposed for reclassification of impugned goods under CTI 3402 1300 and for demand of Customs duty along with interest by invoking extended period of time under Section 18(2) read with Section 28(4) of the Customs Act, 1962. Further, it was also proposed to confiscate the goods for violation under Sections 111(m), 111(o) ibid and also for imposition of penalties on the respondents under Sections 114A/112(a)&(b) ibid. In adjudication of the said SCNs, learned Principal Commissioner of Customs vide the impugned order dated 31.12.2021 has classified the goods under CTI 38249090/ 3824 9990, as declared by the respondents-importer and dropped the proceedings initiated in the said SCNs. Feeling aggrieved with the impugned order, the appellant department have filed this appeal before the Tribunal. Respondents have also filed cross objection against the appeal filed by the department.

3. Learned Authorized representative appearing for Revenue stated that impugned goods are classifiable as Organic Surface-Active Agent (OSAA) as it fulfil the conditions specified under Chapter Note 3(a) and 3(b) of Chapter 34 of the Customs Tariff. In explaining the chapter note 3(a), he reiterated that it has to be read as fulfilling any one of the conditions viz., (i) a 'transparent liquid'; or (ii) a 'translucent liquid'; or (iii) 'stable emulsion without separation of insoluble matter; and for chapter 3(b) he stated that it should 'reduce the surface tension of water 4.5 x $10^{-2}$ N/m (45 dyne/Cm) or less'. Since the chemical test reports indicate that such conditions are fulfilled and that such goods are non-ionic in nature, these are rightly classifiable as Fatty Alcohol Ethoxylates having characteristics of non-ionic surface-active agents under CTI 3402 1300. He further stated that in terms of Section 17 ibid, an importer is required to self-assess the duty leviable on imported goods correctly and any failure on proper payment of duty would indicate malafide intent on their part. Furthermore, as the investigation had brought out various documents to show the malafide intention of mis-classification with an intention to evade duty, the proposal made in the SCNs are to be sustained by setting aside the impugned order. Therefore, he justified the appeal filed by Revenue for setting aside the impugned order.

4.1 On the other hand, Learned Counsel stated that respondents had imported the goods declaring the description as Alcohol Ethoxylates having 1 mole or 2 moles of ethylene oxide. He stated that in terms of Note 3 to Chapter 34 of Customs Tariff Act, a definition of 'organic surface-active agents' (OSAA) has been provided for the purpose of classification under Heading 34.02, which is as under:

> *"For the purposes of heading 3402, "organic surface-active agents" are products which when mixed with water at a concentration of 0.5% at 20o C and left to stand for one hour at the same temperature:*
>
> *(a) give a transparent or translucent liquid or stable emulsion without separation of insoluble matter; and*
>
> *(b) reduce the surface tension of water 4.5 X 10-2 N/m (45 dyne/Cm) or less*."

The above OSAA definition has twin conditions i.e., (a) water solubility and (b) reduction in water surface tension. Both these conditions are to be satisfied cumulatively, for a product to be classified under Heading 34.02. Since the imported goods satisfy OSAA condition of reduction in water surface tension as per Note 3(b) of Chapter 34, and not the first condition of Note 3(a), as per the test reports of department and those undertaken by them, he stated that these cannot be classified under CTH 34.02. In this regard, learned Counsel highlighted that the Test Reports dated 22.03.2018 & 07.06.2018 given by CRCL, Vadodara confirm that the sample in water *"gives translucent liquid with separation in two layers*". Further, representative samples tested in Fare labs Food Analysis & Research Laboratory, Haryana, and Shraddha Analytical Services, Mumbai, respectively, vide test reports dated 03.03.2017 and 10.02.2017, respectively had given the result as "Translucent solution with layer" and "Translucent liquid with separation of insoluble matter in upper layer". Therefore, he emphasized that the impugned goods are not water insoluble.

4.2 Learned Counsel further stated that the phrase "without separation of insoluble matters" appearing in Chapter Note 3(a) above, equally applies to transparent or translucent liquid when these words are appearing in a company of the words i.e., 'transparent' or 'translucent liquid' are accompanied by the phrase 'stable emulsion without separation of insoluble matter'. The common thread applied to all three expressions is complete water solubility. This test of water solubility is qua the imported goods and not water. He further submitted that first part of Note 3(a) "*transparent or translucent liquid or stable emulsion*" is on appearance, and later part *"without separation of insoluble matter"* is on stability; both appearance and stability are two inseparable aspects of water solubility in built into Note 3(a), and the same cannot be read in isolation. Therefore, he stated that imported goods do not satisfy condition of water solubility as stipulated in Note 3(a) of the Chapter 34 (OSAA test) as the sample shows Translucent liquid with separation of insoluble matter, and thus it cannot be classified under Heading 34.02.

4.3 By relying on the judgement of the Hon'ble Supreme Court in the case of *Collector of Central Excise Vs. Fenoplast (P) Ltd.* – 1994 (72) E.L.T. 513 (S.C.), wherein it was held that where there is a statutory definition, then trade parlance is totally irrelevant and one cannot, in such a situation, look into any other authority for classification. Therefore, learned consul stated that even if the Customs test report suggests that the imported goods are non-iconic surfactant, the same are not classifiable under Heading 34.02 as they do not meet water solubility test as provided under Note 3(a) of Chapter 34. He further stated that HSN Explanatory Notes to Heading 34.02 specifically exclude water insoluble surface-active products and preparations as they fall under Heading 38. Note 3 has been part of Chapter 34 since March 1986 in the Customs Tariff. Prior to 1986, when Note 3 did not exist in the Customs Tariff which was based on BTN, Heading 34.02 excluded water insoluble surfactants. Thus, water insoluble surfactants were always excluded from Chapter 34. Therefore, the imported goods being water insoluble surfactant will fall under Heading 38.24, and not under Heading 34.02.

4.4 He further submitted that test reports of CRCL, Baroda dated 22.03.2018 and 07.06.2018 as relied upon by Customs, confirmed that the imported goods are non-ionic surfactant and gives translucent liquid with separation in two layers. Formation of layer on the top representing separation of insoluble matter itself shows that the products in question are water insoluble and not satisfying Note 3(a) of Chapter 34. Thus, he submitted that the classification adopted by the department is incorrect.

4.5 As regards the classification of goods cleared by the respondents themselves, subsequent to the impugned order, he stated that all imports are being assessed finally under Heading 38.24, and all past provisional bills of entry have been finalised under Heading 38.24 and bankguarantee(s) have been cancelled / returned to the Respondents. Therefore, he stated that the impugned order is not sustainable in treating the classification of the same imported goods, differently for same/different importers.

4.6 On the issue of levy of interest, penalty, learned counsel submitted that Section 3 of the Customs Tariff Act 1975, under which additional duty of customs (CVD/IGST) is levied, has not adopted/borrowed the provisions relating to interest and penalty. Therefore, interest under Section 28AA of the Customs Act 1962 and penalty under Section 114A of the Customs Act 1962 cannot apply in relation to additional duty of customs (CVD/IGST). Hence, demand of interest and imposition of penalty is completely bad in law. In this regard, he relied upon the decision of Hon'ble High Court of Mumbai in *Mahindra and Mahindra Vs. Union of India* – 2022 (10) TMI 212 which was also maintained by Hon'ble Supreme Court in 2023 (8) TMI 135, by dismissing the Revenue's Review Petition – 2024 (1) TMI 1277 - SC Order. Therefore, he prayed that the present appeal of Revenue is liable to be dismissed.

5. We have heard both learned Authorized Representative of the Department and the learned Counsel appearing for the respondents and perused the case records and the synopsis given in the form of written submissions.

6. The following issues arise for determination before the Tribunal:

(i) whether the importer has mis-declared the classification of the imported goods by declaring it under CTI 3824 9090/3824 9990 and whether the imported goods are liable for confiscation under Section 111(m)/111(o) of the Customs Act, 1962 and the respondents importer is liable for imposition of penalty under Section 112(a)/(b) *ibid* or not;

(ii) whether the impugned order of original authority in dropping the proposals made in SCN for modifying the classification of the imported goods under CTI 3402 1300 and consequent demand of customs duty by invoking extended period of limitation, dropping of proposal for imposition of redemption fine and penalty is legally sustainable or not;

7. The issue for consideration before us is determination of the proper classification of imported goods, for deciding on the appropriate levy of customs duty i.e., Basic Customs duty (BCD), leviable under Section 12 of the Customs Act, 1962, as specified under the First Schedule to the

Customs Tariff Act, 1975; and, whether the demand of duty including confiscation of imported goods and redemption fine thereof, penalty imposable on the respondents, as proposed in the SCNs dated 13.08.2019 & 01.10.2020 and which was dropped in the impugned order is sustainable or not. The period of dispute involved in SCNs dated 13.08.2019 and 01.10.2020, are from 08.11.2018 to 12.07.2019 and 27.08.2015 to 21.08.2020, respectively.

8.1 In order to address the above issue of classification of imported goods, we would like to refer the relevant legal provisions contained in Section 12 of the Customs Act, 1962; relevant entries in the First Schedule to the Customs Tariff Act, 1975 and rules framed thereunder, for consideration of proper and appropriate classification of the subject goods under dispute.

> "Section 12. Dutiable goods. -
>
> *(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.*
>
> *(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government."*
>
> "Section 1. Short title, extent and commencement. -
>
> *(1) This Act may be called the Customs Tariff Act, 1975.*
>
> *(2) It extends to the whole of India.*
>
> *(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.*
>
> Section 2. Duties specified in the Schedules to be levied. -
>
> The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules.
>
> *xxx xxx xxx xxx*
>
> THE FIRST SCHEDULE – IMPORT TARIFF
>
> (Refer Section 2)
>
> *THE GENERAL RULES FOR THE INTERPRETATION OF IMPORT TARIFF (GIR)*
>
> *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 articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.*

*(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, in so far 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.*

*4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.*

*…*

*6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires."*

8.2 From plain reading of the above legal provisions, it transpires that in order to determine the appropriate duties of customs payable on any imported goods, one has to make an assessment of the imported goods for its correct classification under the First Schedule to Customs Tariff Act, 1975 in accordance with the provisions of the Customs Tariff Act by duly following the General Rules for Interpretation (GIR) and the General Explanatory notes (GEN) contained therein. The First Schedule to the Customs Tariff Act, 1975 specifies the various categories of imported 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 Customs Tariff Act, 1975. 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 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 are not otherwise required, 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 Customs Tariff Act. In the absence of any statutory definition, or any guideline provided by HS explanatory notes, the trade parlance theory is to be adopted to ascertain as to how the goods are known in the common trade parlance for the purpose of dealing between the parties.

8.3 Further, in context with the case in hand, we note that the following are some of the important rules to be followed in the scheme of determining correct classification of imported goods:

> (i) classification of goods shall be determined according to the terms of the headings and any relative Section or Chapter Notes; (GIR 1)
>
> (ii) goods, which are in the nature of unfinished or incomplete articles and those which are mixtures or combinations of different materials, its classification shall be determined as provided under 2(a) (b) (GIR 2)
>
> (iii) if the goods are found to be classifiable under two or more headings, then the classification shall be effected as per the rules provided under 3(a), 3(b) and 3(c) [GIR 3]
>
> (iv) Goods which cannot be classified in accordance with the aforesaid rules, then the same shall be classified under the heading appropriate to the goods to which they are more akin. (GIR 4)
>
> …
>
> (vi) For legal purposes, the classification of goods in the sub-headings shall be determined according to the terms of those sub-headings and any related sub-heading Notes (GIR 6)

8.4 In the impugned order, the learned Commissioner has given the following findings in arriving at the conclusion of classification of the impugned goods under CTI 38249090/ CTI 3824 9990. The relevant paragraphs of the said impugned order are extracted and given below:

**40.** The main issue to be decided is whether "Dehydol LS 1 TH (One Mol Alcohol Ethoxylate (1214)", "Dehydol LS 2 TH (Two Mol Alcohol Ethoxylate (1214)" and "Nedol LM2 2 mol Lauryl Alcohol Ethoxylate" are classifiable under 34.02.13.00 as claimed in the Show Cause Notices or under 38.24.90.90 as being classified by the Importer.

Associated issues are:

1. Whether by not declaring in the B.Es that impugned items are Fatty Alcohol Ethoxylates, along with their trade name, the Importer M/s Godrej Industries intentionally mis-declared with an intent to evade payment of appropriate duty of Customs.

2. Both the SCNs issued by Commissioner NS-I as well as by Pr. Commissioner, Ahmedabad were with respect to provisionally assessed B.Es, after DRI had detained the goods and sent the samples for testing, under suitable Bond and Bank Guarantees for their finalization and for determining the differential duty to be recovered. This was sought to be done in terms of provisions of Section 18(2) of the Customs Act in the case of SCN issued by Nhava Sheva-I, Whereas provisions of Section 18(2) read with Section 28(4) ibid were invoked in the SCN issued by Pr. Commissioner Ahmedabad.
   Whether such demand/finalization also attracts provisions of Section 28(4), is before me for consideration.

3. Whether the goods are liable for confiscation and penalties are liable to be imposed under Section 114(a) and Section 112(a) & (b), on the importing company and the individual persons involved.

**41.** Coming to the second issue first, I am of the opinion that provisions of Section 18(2) of the Customs Act are self-contained by which final duty payable is determined, and the Section itself mandates for payment of short paid duty. The relevant part of the Section 18(2) ibid is reproduced below:

"(2) When the duty leviable on such goods is assessed finally in accordance with the provisions of this Act, then—
(a) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed and if the amount so paid falls short of, or is in excess of, 1[the duty finally assessed], the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be"

It is only after finalization, if still some short paid amount is noticed as per the department and depending whether such short payment was by reason of willful mis-statement or collusion or suppression of facts, or otherwise, the same is demanded in terms of provisions of Section 28(1) or 28(4) as the case may be. This is clearly borne out from the definition of "relevant date" given under this Section, Which specifies that the relevant date in a case where duty is provisionally assessed under Section 18 is the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be. Hence invoking provisions of Section 28(4) in the Show Cause Notice issued by Ahmedabad Customs is not tenable. Therefore, statutory time limit mentioned in Section 28 (9) (b) is not applicable for adjudication of these two Show Cause Notices.

**42.** Allegations of the Revenue in the Show Cause Notices relating to the main issue of mis-declaration and mis-classification are:

1. The Importer deliberately mis-declared the description of the goods in as much as they didn't declare the name of the goods as "Fatty Alcohol Ethoxylates" alongwith the trade names of these products to suit their mis-classification under T.H. 38.24 instead under T.H.34.02.

2. As per the Customs Laboratory Test reports Dehydol LS1 TH as well as Dehydol LS 2 TH were tested positive for the presence of organic surface active agents, for alcohol and ethoxylate. The sample was tested 'non-ionic'.

3. Various website materials including the website of supplier company M/s. Thai Ethoxylate Co. Ltd mention that fatty alcohol ethoxylates are non-ionic surfactants.

4. Fatty alcohol ethoxylates are categorically included in HSN Explanatory Notes under heading 34.02.

5. Organic surface active agents are defined under Chapter 34 as chemical compounds, not chemically defined, which contain one or more hydrophilic or hydrophobic functional groups in such a way that when mixed with water at a concentration of 0.5% at 20 °C and left to stand for one hour at the same temperature (a) they give a transparent or translucent liquid or stable emulsion without separation of insoluble matter and (b) reduce surface tension of water to 45 dyne/cm or less.

With reference to this definition, the department's contention is:

(i) That in case of translucent liquid, "without separation of insoluble matter" doesn't apply.
(ii) Further, the entire solution need not be 100% transparent or translucent liquid. If a major part of the solution appears to be translucent liquid and some droplets appear on top of the solution, still it is a translucent liquid.
(iii) If the sample doesn't dissolve in the water, the question of reduction of surface tension of water doesn't arise.
(iv) Separate layer as floating droplets of insoluble matter may be formed due to presence of certain impurities resulting from the manufacturing process, small quantity of fatty alcohols or hydrophobic raw materials which escaped during the manufacturing process (not exceeding 15%).

43. Let me discuss these issues one by one. The supplier had declared the Trade name/Brand name and chemical name. The Show Cause itself at para 7 mentions that the chemical name as Alcohols Ethoxylate C12-14, which the importer had declared in the description of the goods. The description given by the importer in the Bills of Entry is "Dehydol LS1 TH (1 Mol Alcohol Ethoxylate) C1214"/ "Dehydol LS 2 TH (2 Mol Alcohol Ethoxylate 1214)". Safety Data Sheets of the foreign suppliers, M/s. Thai Ethoxylate Co. Ltd give the identification of the product as Alcohols C12-14, ethoxylated. Relied upon document 31 of the SCN i.e. the website material www.heraprojects.com describes the substance characterization as Alcohol ethoxylates (AE) and mention that they are a very widely used class of non-ionic surfactants. Similarly PubChem website uses the word "Alcohols, C12-14, ethoxylated" in the Substance infocard. The website www.chemicalland21.com (RUD 32) also mentions that non-ionic surfactants include alcohol ethoxylates, alkyl phenol ethoxylates etc. In some other para, it is mentioned fatty alcohol ethoxylates are non-ionic surfactants. "Applied Surfactants- princilples and application" written by Tharwat F. Tadros mentions that Alcohol ethoxylates are generally produced by ethoxylation of a fatty chain alcohol such as dodeconal. It also mentions that several generic names are given to this class of surfactants such as ethoxylated fatty alcohols, alkyl polyoxyethylene glycol, etc. So it is noticed that fatty Alcohol ethoxylates and Alcohol ethoxylates are being interchangeably used. Both are described as non ionic surfactants in general. It cannot be therefore by any stretch of imagination, be reasoned that due to non-mention of the word "Fatty alcohol ethoxylates" in the name of the product, the Customs officer has failed to notice that the goods are surfactants and are to be classified under Tariff Heading 34.02. (However, I will be discussing later whether the subject goods satisfy the definition of organic surface active agent given in Chapter note 3 of Chapter 34). In any case, the Importer's invoice and COO certificate mention in the description of the goods "Fatty Alcohol ethoxylates", in addition to Dehydol LS 1 TH (1 Mol alcohol ethoxylate) C12-14.

44. These documents are submitted along with B.Es and are in the domain of Customs officer both at assessment level and examination level. The prima facie view that a Customs officer forms about the

classification of the impugned goods will not get altered, if the description is given as "Fatty alcohol ethoxylates" rather than "Alcohol ethoxylates". Therefore the description was mis-declared in order to misclassify the goods is unfounded and not tenable. When the goods are described correctly and classified as per the understand and reasoning of the importer, which may be at variance with the understanding of the Department/Customs officer, such classification cannot be considered as mis-declaration or wilful mis-statement. From the beginning the importer has been classifying the impugned goods 1 Mol or 2 Mol under 3824. The Department has accepted this classification and assessed the goods.

45. Let me now examine the main issue of classification dispute as to whether the Dehydol LS1 TH, one Mole Alcohol Ethyxolate C12-14, Dehydol LS2 TH, two Mole Alcohol Ethoxylate C12-14 and Neodol LM 2, two Mole Lauryl Alcohol Ethoxylate are classifiable under Tariff Heading 3402 or under Tariff Heading 3824.

Organic Surface Agents have been statutorily defined in Note 3 to chapter 34 of the Customs Tariff Act. The definition is as follows:

> For the purposes of heading 3402, "organic surface-active agents" are products which when mixed with water at a concentration of 0.5% at 20₀C and left to stand for one hour at the same temperature:
>
> (a) give a transparent or translucent liquid or stable emulsion without separation of insoluble matter; and
>
> (b) reduce the surface tension of water 4.5 X $10_{-2}$ N/m (45 dyne/Cm) or less.

When the statute provides definition of the goods, the classification of those goods can only be with reference to the said definition. How these goods are understood in the common parlance or described by the manufacturing industry or how they are considered in the academic books or in different websites will be of no consequence. This is the settled position of law. Even the SCNs do not dispute this legal position.

46. HSN Explanatory Notes given under Tariff Heading 3402 specify that organic surface active agents of this heading are chemical compounds, not chemically defined, which contain one or more hydrophilic or hydrophobic functional groups in such a proportion that, when mixed with water at a concentration of 0.5% at 20 °C and left to stand for one hour at the same temperature, they give a transparent or translucent liquid or stable emulsion without separation of insoluble matter. For the purposes of this heading, an emulsion should not be considered as having a stable character if, after being left to stand for one hour at 20 °C, (1) solid particles are visible to the naked eye, (2) it has separated into visually distinguishable phases or (3) it has separated into a transparent part and a translucent part, visible to the naked eye.

This HSN Note make it clear that any type of hydrophobic chain with a combination of any hydrophilic chain will not give transparent or translucent liquid or stable emulsion without separation of insoluble matter, when mixed with water.

47. All the tests got conducted by the Department as well as by the Importer on Dehydol LS 1/Dehydol LS 2 confirmed formation of two layers/separation of insoluble matter. The tests reports from the Customs & Central Excise Laboratory, Baroda of Dehydol LS1 TH and Dehydol LS2 TH indicated the miscibility of sample in water as "translucent liquid with separation into two layers/translucent liquid with layer formation". The reports also have mentioned that the test for alcohol and ethoxylate are positive. They also have mentioned the presence of surface active agents as positive. The lab was not asked for testing the sample whether it is surface active agent as per Note 3 (a) of Chapter 34. Neither the reports mentioned that the samples were tested positive for organic surface active agents as per the definition given in chapter note 3(a) of Chapter 34. However, the test report of the sample of Dehydol LS 1 TH BA given by CRCL, New Delhi, in the case of M/s. BASF, which was relied upon by the Revenue (RUD 33), reports that the sample has the characteristics of ethoxylated fatty alcohol and is non-ionic in nature. But it also reports that the sample when mixed with water at the concentration of 0.5% at 20° C and left to stand for one hour at same temperature has given translucent liquid with

separation of two layers. The report also says that the sample is sparingly soluble in water. It further mentions that the lower translucent liquid (aqueous layer) was taken for surface tension determination and the surface tension of water was below 45 dyne/cm. Only considering the surface tension of the aqueous layer the test report wrongly concludes that the sample conforms to the condition of Note 3 of Chapter 34.

**47.1** When the translucent liquid was separated into two visually distinguishable phases (layers) i.e. aqueous layer and insoluble material layer; as per the HSN Explanatory Notes it is not a stable emulsion. The test reports submitted by the importer from Sharaddha Analytical Services for these products indicate that the samples gave a translucent liquid with separation of insoluble matter in upper layer. The report of Farelabs Food Analysis & Research Laboratory, Hariyana mentions that the samples of Ethoxylate Alcohol 1 Mole and 2 Mole gave translucent liquid with a layer. Testing of Dehydol LS 1/Dehydol LS 2 imported by M/s. BASF by CSIR-National Chemical Laboratory, Pune revealed that the sample of LS 1 showed transparent liquid with separation of insoluble mass after 10 minutes of addition of LS1 and sample LS2 shown translucent liquid with separation of insoluble mass after 15 minutes of addition of LS2. It was mentioned in the report that the samples were not homogeneous emulsions and underwent phase separation within 15 minutes with insoluble mass.

Whatever way it is expressed in these reports, it is clear that insoluble material formed a separate layer/phase.

**47.2** **Emulsion** is described as a mixture of two or more liquids in which one is present as droplets, of microscopic or ultramicroscopic size, distributed throughout the other. Unstable emulsions eventually separate into two liquid layers. Some familiar emulsions are milk (a dispersion of fat droplets in an aqueous solution) and butter (a dispersion of droplets of an aqueous solution in fat).

**47.3** Therefore, whenever two layers are formed/separated into two phases, it is rather an unstable emulsion. Because of the translucent nature, the test reports appeared to have preferred to call it as translucent liquid with layer separation or two layers. One of the dictionary definition of surface active agent is any "substance that when dissolved in water or aqueous solution reduces its surface tension or the interfacial tension between it and another liquid. Therefore dissolution in water is essential. When dissolved in water the whole quantity will be either transparent or translucent liquid. But if it separates out into layers it cannot be a single translucent liquid. When separated into two phases or two layers even if each of these layers i.e. lower aqueous layer and upper insoluble matter layer are translucent, it cannot be called as a translucent liquid. Therefore when two translucent liquid layers are formed, they have separated into visually distinguishable phases, and it is nothing but an unstable emulsion of translucent nature. That is why the safety data sheets of Thai Ethoxylate Co. Ltd mentioned the solubility of Dehydol LS 1 TH as well as Dehydol LS 2 TH as emulsifiable, though these products don't give stable emulsions when mixed with water without separation of insoluble matter. The issue can be analysed slightly differently also. Consider that completely insoluble pebbles are added to/mixed with clear water which is transparent and allowed to remain for one hour. Obviously no change will be noticed, as the solute (pebbles) do not dissolve in water (solvent). Can we say that this is a transparent liquid with insoluble pebbles when the miscibility is zero? The answer is no. After adding the pebbles to the water if it gives rise to transparent liquid of the whole mass then only it can be said that transparent liquid is formed after adding the solute to the solvent. In other words, the whole mass should form into a single transparent liquid or translucent liquid after adding the solute sample to water, to qualify as an organic surface active agent, in terms of Note 3(a) of Chapter 34.

**47.4** Therefore, I agree with the Importer's submissions that the common thread applied to transparent or translucent liquid or stable emulsion without separation of insoluble matter is water solubility. The words 'transparent' or 'translucent' liquid needs to be understood in the light of phrase stable emulsion without separation of insoluble matter. These three categories are in higher to lower stages of water solubility. Otherwise presence of third category i.e. stable emulsion would become redundant. The inherent meaning of transparent or translucent liquid is that the complete mass after mixing should be transparent or translucent as a single entity/phase.

XXX XXX XXX XXX

47.7 Further, HSN Explanatory Notes under heading 3402 clarify that this heading doesn't cover water insoluble surface active products and preparations. It is mentioned that they fall in heading 3824 provided they are not included in a more specific heading. Matching HSN Explanatory Notes is also given under Tariff Heading 3824. It says that petroleum sulphonates, not water soluble, comes under Tariff Heading 3824. However water soluble petroleum sulphonates are excluded from this heading, they fall under heading 3402. As discussed above, alcohol ethoxylates less than 03 Moles are water insoluble. Therefore, they cannot be covered under heading 3402 and are rightly classifiable under Tariff Heading 3824.

xxx xxx xxx xxx

49.4 The above information reveals that the solubility in water is a determining factor for a particular fatty alcohol ethoxylate to merit classification as organic surface active agent under chapter 3402, even if it is generally understood as a non-ionic surfactant.

xxx xxx xxx xxx

51. It is not out of place to mention that the department has issued Show Cause Notice in 2016, proposing the classification of these products namely Dehydol LS 2 TH and Dehydol LS1 TH under 38237090 instead of under 38249090 and demanded safeguard duty on the ground that they are saturated fatty alcohols. However, accepting the classification under 38249090, the demand was dropped. It may be noted that the both competing tariff items considered in that Show Cause Notice were under Chapter 38.

xxx xxx xxx xxx

52.4 For the reasoning and analysis discussed above, I am of the considered opinion that the correct classification of these impugned products is under Tariff Heading 3824 9090 of the Customs Tariff.

53. Since the charges of mis-classification and mis-declaration do not sustain, all proposals for demanding differential duty with interest, confiscation of the goods and penalties on the Importing Company and on the individuals also fail.

54. In view of my above findings, I pass the following order:

ORDER

(a) I hold that the impugned goods viz "Dehydol LS 1 TH (One Mol Alcohol Ethoxylate (1214)", "Dehydol LS 2 TH (Two Mol Alcohol Ethoxylate (1214)" from M/s. Thai Exthoxylate Co. Ltd and "Lauryl Alcohol Ethoxylate 2 Mole (LAE 2 Mole)" were correctly classified under 3824 9090/38249990. Accordingly, I drop all charges levelled against the Importer and other Noticees in the Show Cause Notice.

(b) Consequentially, the proposals in the Show Cause Notice relating to demand of differential duty, recovery of interest, confiscation of goods and imposition of penalties on M/s. Godrej Industries Ltd & M/s. Pan Oleo Enterprise Private Ltd., and proposed personal penalties on Shri Shashishekhar Lovekar, Shri Sadanand Palnitkar, Shri Pradeep Bagade and Shri Kannan Mudaliar, fail to sustain.

(c) The pending provisional assessments are to be finalized in terms of the findings of this order.

xxx xxx xxx xxx"

8.5 From the above, we find that the issue under dispute was examined in detail in the impugned order for determination of proper classification of the impugned goods, either under CTI 3824 9090/3824 9990 as claimed by the respondents, or, under CTI 3402 1300 as proposed by the department in the SCNs, for the purpose of determining appropriate duty of customs payable thereon. However, since the issue is under appeal before us, we are also examining independently by undertaking the exercise of proper classification of imported goods in terms of the legal provisions of the Customs Tariff Act, 1975 and the General Rules of Interpretation of the said tariff.

9.1 As regards the issue of dispute in classification, in the case before us, the contending classification of imported goods discussed in the impugned order are either under CTI 3824 9090/3824 9990 or CTI 3402 1300 of the First Schedule to the Customs Tariff Act. Thus, it clearly transpires that at the Chapter level itself, there is a difference of opinion among the department and the respondents. The dispute in classification therefore lies in the narrow compass of analysis of the appropriate chapter headings and the relevant sub-headings under which the impugned goods are covered as per the Customs Tariff and then classifying the impugned product under the corresponding tariff entry. The relevant entries of the above two contending classification are as follows:

***"SECTION V***
***MINERAL PRODUCTS***

***CHAPTER 34***

***Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articles, modelling pastes, "dental waxes" and dental preparations with a basis of plaster***

***Notes:***

*1. This Chapter does not cover :*

*xxx xxx xxx xxx xxx*

*3. For the purposes of heading 3402, "organic surface-active agents" are products which when mixed with water at a concentration of 0.5% at 20°C and left to stand for one hour at the same temperature :*

*(a) give a transparent or translucent liquid or stable emulsion without separation of insoluble matter; and*

*(b) reduce the surface tension of water 4.5 X $10^{-2}$ N/m (45 dyne/Cm) or less.*

*xxx xxx xxx xxx xxx*

| Tariff Item | Description of goods |
|---|---|
| (1) | (2) |
| **3402** | **Organic surface-active agents (other than soap); surface-active preparations, washing preparations (including auxiliary washing preparations) and cleaning preparations, whether or not containing soap, other than those of heading 3401** |
| | *- Organic surface-active agents, whether or not put up for retail sale:* |
| 3402 11 | *-- Anionic:* |
| 3402 1110 | --- Silicone surfactant |
| 3402 1190 | --- Other |
| 3402 1200 | --- Cationinc |
| 3402 1300 | --- **Non-ionic** |
| 3402 1900 | --- Other |

And

CHAPTER 38

**Miscellaneous chemical products**

***Notes:***

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

*(a) separate chemical elements and separate chemically defined compounds, whether or not containing impurities;*

*xxx xxx xxx xxx xxx*

| Tariff Item | Description of goods |
|---|---|
| (1) | (2) |
| **3823** | **Industrial monocarboxylic fatty acids; acid oils from refining; industrial fatty alcohols** |
| xxx | xxx |
| **3824** | **PREPARED BINDERS FOR FOUNDRY MOULDS OR CORES; CHEMICAL PRODUCTS AND PREPARATIONS OF THE CHEMICAL OR ALLIED INDUSTRIES (INCLUDING THOSE CONSISTING OF MIXTURES OF NATURAL PRODUCTS), NOT ELSEWHERE SPECIFIED OR INCLUDED** |
| 3824 1000 | - Prepared binders for foundry moulds or cores |
| 3824 3000 | - Non-agglomerated metal carbides mixed together or with metallic binders |
| xxx | xxx |
| 3824 9031 | - *Mixtures containing per halogenated derivatives of acrylic hydrocarbons containing two or more halogens other than chlorine and fluorine; ferrite powder; capacitor fluids – PCB type; dipping oil for treatment of grapes; Poly brominated biphenyls, poly chlorinated biphenyls, Poly chlorinated terphenyls, crocidolite; goods of a kind known as "hazardous waste"; phosphor gypsum:* |
| 3824 9031 | ---- Mixtures containing per halogenated derivatives of acrylic hydrocarbons containing two or more halogens other than chlorine and fluorine |
| 3824 9032 | ---- Ferrite powder |
| 3824 9033 | ---- Capacitor fluids – PCB type |
| 3824 9034 | ---- Dipping oil for treatment of grapes |
| 3824 9035 | ---- Poly brominated biphenyls, poly chlorinated biphenyls, Poly chlorinated terphenyls, crocidolite |
| 3824 9036 | ---- Goods of a kind known as "hazardous waste" |
| 3824 9037 | ---- Phosphor gypsum |
| 3824 9038 | ---- Phosphonic Acid, Methyl-compound with (aminoimino methyl) urea (1:1) |
| 3824 9090 | ---- **Other** |

9.2 On careful reading of the above tariff entries and by applying the General Interpretative Rules (GIR) 1, the position is made clear that Customs Tariff Heading (CTH) 3402 covers all types of 'Organic Surface-Active Agents' i.e., Anionic, Cationic, Non-ionic and other types; washing preparations, whether or not containing soap. However, the characteristics of OSAA are given in specific terms under Chapter Note 3 which is required to be fulfilled for classifying the product under this CTH. Further, in terms of Bureau of Indian Standard explanation given under IS 7597:2001, Organic Surface-Active Agent (OSAA) refers to a chemical compound possessing surface activity which, dissolved in a liquid in particular in water, lowers the surface tension or interfacial tension, by preferred adsorption at the liquid/vapour surface, or other interfaces. Therefore, in order to classify a product as OSAA, both the conditions of Chapter Note 3 and the above requirements under BIS have to be fulfilled.

9.3 Whereas in terms of the scope of tariff entry under CTH 3824, it covers all chemical products and preparations of the chemical and allied industries including those consisting of mixtures and natural products, not elsewhere specified or included. This includes acrylic hydrocarbons containing two or more halogens of chlorine and fluorine and other than such chemicals. Therefore, all miscellaneous chemical products, which are not to be classified in any other headings would also be covered under heading 3824.

9.4 In order to further examine the classification in terms of various customs tariff entries under the two contending sub-headings, we would like to examine the HS explanatory notes of the WCO, which describe in detail the scope and coverage of goods under Customs classification. The extract of HS classification in respect of relevant headings 3402 and 3824 are given in the following paragraphs.

**34.02 - Organic surface-active agents (other than soap); surface-active preparations, washing preparations (including auxiliary washing preparations) and cleaning preparations, whether or not containing soap, other than those of heading 34.01.**

- Organic surface-active agents, whether or not put up for retail sale :

3402.11 - - Anionic

3402.12 - - Cationic

3402.13 - - Non-ionic

3402.19 - - Other

3402.20 - Preparations put up for retail sale

3402.90 - Other

**(I) ORGANIC SURFACE-ACTIVE AGENTS (OTHER THAN SOAP)**

The organic surface-active agents of this heading are chemical compounds, not chemically defined, which contain one or more hydrophilic or hydrophobic functional groups in such a proportion that, when mixed with water at a concentration of 0.5 % at 20 °C and left to stand for one hour at the same temperature, they give a transparent or translucent liquid or stable emulsion without separation of insoluble matter (see Note 3 (a) to this Chapter). For the purposes of this heading, an emulsion should not be considered as having a stable character if, after being left to stand for one hour at 20 °C, (1) solid particles are visible to the naked eye, (2) it has separated into visually distinguishable phases or (3) it has separated into a transparent part and a translucent part, visible to the naked eye.

Organic surface-active agents are capable of adsorption at an interface; in this state they display a number of physico-chemical properties, particularly surface activity (e.g., reduction of surface tension, foaming, emulsifying, wetting), which is why they are usually known as "surfactants".

However, products which are not capable of reducing the surface tension of distilled water to 4.5 x $10^{-2}$ N/m (45 dyne/cm) or less at a concentration of 0.5 % at 20 °C are **not** regarded as surface-active agents and are therefore **excluded** from this heading.

xxx xxx xxx xxx

This heading **does not cover** :

(a) Shampoos or preparations for foam baths, whether or not containing soap or other surface-active agents (**Chapter 33**).

(b) Paper, wadding, felt and nonwovens, impregnated, coated or covered with detergent (**heading 34.01**).

(c) Preparations, containing surface-active agents where the surface-active function is either not required or is only subsidiary to the main function of the preparation (**headings 34.03**, **34.05**, **38.08**, **38.09**, **38.24**, etc., as the case may be).

(d) Abrasive preparations containing surface-active agents (scouring pastes and powders) (**heading 34.05**).

(e) Water-insoluble naphthenates, petroleum sulphonates and other water-insoluble surface-active products and preparations. They fall in **heading 38.24**, **provided** they are not included in a more specific heading.

9.5 In terms of HSN explanatory notes to heading 3402, Organic surface-active agents may be anionic, cationic, non-ionic or ampholytic. While detailed explanations have been given about various types of OSAA, certain exclusions from this chapter have also been provided. 'Water-insoluble surface-active agents/products and their preparations' is one such product, which is classifiable under heading 3824, and therefore in terms of HSN explanatory notes are excluded from the scope of classification of OSAA under heading 3402.

**38.24 - Prepared binders for foundry moulds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included (+).**

3824.10 - Prepared binders for foundry moulds or cores

3824.30 - Non-agglomerated metal carbides mixed together or with metallic binders

3824.40 - Prepared additives for cements, mortars or concretes

3824.50 - Non-refractory mortars and concretes

3824.60 - Sorbitol other than that of subheading 2905.44

- Mixtures containing halogenated derivatives of methane, ethane or propane :

3824.71 -- Containing chlorofluorocarbons (CFCs), whether or not containing hydrochlorofluorocarbons (HCFCs), perfluorocarbons (PFCs) or hydrofluorocarbons (HFCs)

3824.72 -- Containing bromochlorodifluoromethane, bromotrifluoromethane or dibromotetrafluoroethanes

3824.73 -- Containing hydrobromofluorocarbons (HBFCs)

3824.74 -- Containing hydrochlorofluorocarbons (HCFCs), whether or not containing perfluorocarbons (PFCs) or hydrofluorocarbons (HFCs), but not containing chlorofluorocarbons (CFCs)

3824.75 -- Containing carbon tetrachloride

3824.76 -- Containing 1,1,1-trichloroethane (methyl chloroform)

3824.77 -- Containing bromomethane (methyl bromide) or bromochloromethane

3824.78 -- Containing perfluorocarbons (PFCs) or hydrofluorocarbons (HFCs), but not containing chlorofluorocarbons (CFCs) or hydrochlorofluorocarbons (HCFCs)

3824.79 -- Other

- Mixtures and preparations containing oxirane (ethylene oxide), polybrominated biphenyls (PBBs), polychlorinated biphenyls (PCBs), polychlorinated terphenyls (PCTs) or tris(2,3-dibromopropyl) phosphate :

3824.81 -- Containing oxirane (ethylene oxide)

3824.82 -- Containing polychlorinated biphenyls (PCBs), polychlorinated terphenyls (PCTs) or polybrominated biphenyls (PBBs)

3824.83 -- Containing tris(2,3-dibromopropyl) phosphate

3824.90 - Other

### (B) CHEMICAL PRODUCTS AND CHEMICAL OR OTHER PREPARATIONS

With only three exceptions (see paragraphs (7), (19) and (31) below), this heading **does not apply** to separate chemically defined elements or compounds.

The **chemical products** classified here are therefore products whose composition is not chemically defined, whether they are obtained as by-products of the manufacture of other substances (this applies, for example, to naphthenic acids) or prepared directly.

The **chemical or other preparations** are either mixtures (of which emulsions and dispersions are special forms) or occasionally solutions. Aqueous solutions of the chemical products of **Chapter 28** or **29** remain classified within those Chapters, but solutions of these products in solvents other than water are, apart from a few exceptions, excluded therefrom and accordingly fall to be treated as preparations of this heading.

The preparations classified here may be either wholly or partly of chemical products (this is generally the case) or wholly of natural constituents (see, for example, paragraph (23) below).

However, the heading **does not cover** mixtures of chemicals with foodstuffs or other substances with nutritive value, of a kind used in the preparation of certain human foodstuffs either as ingredients or to improve some of their characteristics (e.g., improvers for pastry, biscuits, cakes and other bakers' wares). These products generally fall in **heading 21.06**.

**Subject** to the above conditions, the preparations and chemical products falling here include :

(1) **Naphthenic acids** (by-products of the refining of certain petroleum oils and of certain oils obtained from bituminous minerals), **and their salts, other than** the water-soluble naphthenates of **heading 34.02**, and salts of **headings 28.43 to 28.46 and 28.52**. The heading covers, for example, calcium, barium, zinc, manganese, aluminium, cobalt, chromium, lead, etc., naphthenates, some of which are used for the preparation of driers or additives for mineral oils, and copper naphthenate used for the preparation of fungicides.

(2) **Non-agglomerated metal carbides** (tungsten carbide, molybdenum carbide, etc.) mixed together or with metallic binders (such as cobalt), for the manufacture of the tips or the like for tools of heading 82.09.

This heading covers :

### (A) PREPARED BINDERS FOR FOUNDRY MOULDS OR CORES

The heading covers foundry core binders based on natural resinous products (e.g., rosin), linseed oil, vegetable mucilages, dextrin, molasses, polymers of Chapter 39, etc.

These are preparations for mixing with foundry sand to give it a consistency suitable for use in foundry moulds or cores, and to facilitate the removal of the sand after the piece has been cast.

However, dextrins and other modified starches, and glues based on starches or on dextrins or other modified starches are classified in **heading 35.05**.

### (B) CHEMICAL PRODUCTS AND CHEMICAL OR OTHER PREPARATIONS

With only three exceptions (see paragraphs (7), (19) and (31) below), this heading **does not apply** to separate chemically defined elements or compounds.

The **chemical products** classified here are therefore products whose composition is not chemically defined, whether they are obtained as by-products of the manufacture of other substances (this applies, for example, to naphthenic acids) or prepared directly.

The **chemical or other preparations** are either mixtures (of which emulsions and dispersions are special forms) or occasionally solutions. Aqueous solutions of the chemical products of **Chapter 28** or **29** remain classified within those Chapters, but solutions of these products in solvents other than water are, apart from a few exceptions, excluded therefrom and accordingly fall to be treated as preparations of this heading.

The preparations classified here may be either wholly or partly of chemical products (this is generally the case) or wholly of natural constituents (see, for example, paragraph (23) below).

However, the heading **does not cover** mixtures of chemicals with foodstuffs or other substances with nutritive value, of a kind used in the preparation of certain human foodstuffs either as ingredients or to improve some of their characteristics (e.g., improvers for pastry, biscuits, cakes and other bakers' wares). These products generally fall in **heading 21.06**.

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(48) Mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats (so-called "biodiesel") and used, in particular, as fuel for compression-ignition internal combustion piston engines.

Blended products containing by weight 70 % or more of petroleum oils or of oils obtained from bituminous minerals fall in **heading 27.10**.

The heading also **excludes** :

(a) Finishing agents and other products or preparations, of a kind used in the textile, paper, leather or like industries (**heading 38.09**).

(b) Mixtures of heat- or sound-insulating or sound-absorbing mineral materials of **heading 68.06** or mixtures with a basis of asbestos or with a basis of asbestos and magnesium carbonate of **heading 68.12**.

9.6 On reading of the above technical details and the technical literature available in case records, it transpires that non-ionic surfactants can be manufactured from a wide range of raw materials amongst which many are plant based and therefore have the advantage of using renewable resources. In the examples that follow the lipophile is the hydrocarbon chain, just as with the ionic surfactants. Most of the non-ionics have as their hydrophilic, a series of ethylene oxide groups in the form of an ethoxylate chain. The more ethylene oxide groups present, the more hydrophilic the molecule, the greater its solubility in water. An ethoxylate with only two ethylene oxide groups will have virtually no water solubility, but instead will be oil soluble, whereas one with twenty such groups will have good water solubility but poor oil solubility. The basic structure of lipophile attached to an ethoxylate chain represents the most important class of non-ionics, the fatty alcohol ethoxylates and alkyl phenyl ethoxylates. Usually in the naming of these substances the number of moles of ethylene oxide per mole of lipophile is indicated by the number followed by EO. Most recent developments in surfactants have led to the amphoteric, which have a positive and negative change with the same molecule. These surfactants offer good detergency coupled with high foaming capacity and mild action on the skin. The latter makes them particularly valuable in products such as baby shampoo, shower gel and frequent use of shampoos where they act as the secondary surfactant. The primary one generally being an ionic such as sodium laurel ether sulphate.

9.7 It is also noted that chemical compounds are described in many ways, including molecular formulas, chemical structures, generic, systematic, common, and trade names. The CAS Registry (a division of American Chemical Society) gives CAS Number (CAS RN®) which is a unique and unambiguous identifier for a specific substance that allows clear communication and, with the help of CAS various sections of the trade, industry, professional bodies such as scientists, links together all available data and research about that substance; Governmental agencies, trade and industry rely on CAS Registry Numbers for substance identification in regulatory applications because they are unique, easily validated, and internationally recognized.

9.8 The products under consideration in the present appeal viz.,

(a) 'Dehydol LS 1 TH (One Mol Alcohol Ethodylate-1214)';
(b) 'Dehydol LS 2 TH (Two Mol Alcohol Ethodylate-1214)';
(c) 'Lauryl Alcohol Ethoxylate 2 Mole (LAE 2 Mole),

which are provided with common CAS Number 9002-92-0 and of the group Lauryl Alcohol Ethoxylate of 1 or 2 Mole, which is a low ethoxylated, non-ionic surfactant derived from C12–C14 fatty alcohols with 1 or 2 moles of ethylene oxide. Lauryl Alcohol Ethoxylates are synthesized by reacting lauryl alcohol (C12 fatty alcohol) with ethylene oxide (EO), forming a molecule with a hydrophobic tail and a hydrophilic poly oxyethylene chain. Poly oxyethylene lauryl ether, is nonionic surfactant produced by ethoxylation of lauryl alcohol. It is widely used in various applications due to its excellent surface activity, emulsifying properties, and foaming ability.

10.1 On chemical testing of the representative samples drawn by the Customs authorities, the departmental/CRCL chemical test report provides the folowing details about the imported goods. The extract of such test report is given below:

Lab No.: RCL/AH/DRI/1840.    10/02

Test Report

The sample is in the form of colourless liquid having following characteristics:-

Acid content — Nil
PH (as such sample) — 7.0
PH (1% solution) — 7.0
Specific gravity at 70°C — 0.8672
Test for alcohol — Positive
Test for Ethoxylate — Positive
Test for Presence of organic surface active agent — Positive
Nature of sample — Non Ionic
Solubility — methanol & chloroform
Miscibility of sample in water — gives translucent liquid with separation in two layer
Sealed remnant returned.

22/3/18
कमलेश सोनी / Kamlesh Soni
रसायन परीक्षक ग्रेड-II
Chemical Examiner Grade-II
केन्द्रीय उत्पाद एवं सीमा शुल्क प्रयोगशाला
Central Excise & Customs Laboratory
वडोदरा / Vadodara

Despatch No. 1493
Dt. 22/3/18
C.Ex. & Cus. Lab., Vadodara

Seen 26/12/18    Seen 27/12/2018    Seen 22/6/18 (Sadanand)

As per the above report, the presence of organic surface-active agent is shown as 'positive' and the nature of sample as 'non-ionic'; the test for alcohol and ethoxylate is also 'positive'. Further in respect of testing the characteristics for compliance with Chapter Note 3(a) and 3(b) to Chapter 34, it states that "the sample in water gives translucent liquid with separation in two layers". However, in terms of the aforesaid Chapter Note, the transparent liquid or translucent liquid or stable emulsion should be **without separation of insoluble matter**. Therefore, from the aforesaid test report it cannot be said that the imported goods have fulfilled the requirements of Chapter Note 3 for classification under sub-heading 3402.

10.2 We also find that the overseas suppliers had referred the details of the product to the Singapore Customs authorities and they have vide letter dated 22.04.2015 and 02.09.2020 had clarified about the composition of the exported product and its appropriate classification and about the eligibility to ASEAN India FTA benefits. The relevant extracts are given below:

SINGAPORE CUSTOMS

We Make Trade Easy, Fair & Secure

Our Ref: C17.16.V15
22 Apr 2015

SHELL Eastern Petroleum (Pte) Limited
9 North Buona Vista Drive
#07-01 The Metropolis Tower 1
Singapore 138588

Dear Mr Chiok

**CUSTOMS RULING ON CLASSIFICATION OF GOODS**
**(REFERENCE NO.: CRL-150224-0007)**

We refer to your application for customs ruling on classification of goods submitted on 23 Feb 2015.

2 Based on the information and technical specifications provided for your application, the customs ruling is made as follows:

| | | |
|---|---|---|
| Product Name | : | Alpha Ethoxylate Two Mol (Laureth-2) |
| Product Description | : | Alpha Ethoxylate Two Mol (Laureth-2) is a non-ionic surface active agent for use in detergents, cleaning products and personal care products. |
| HS Code | : | 3824.90.99 |
| Date of Issuance | : | 22 April 2015 |

3 Alpha Ethoxylate Two Mol (Laureth-2) is a C12-14 alcohol ethoxylate which is produced by the treatment of 31% oleo alcohol and 69% of ethylene oxide (2 moles of ethylene oxide). The product:

a) has separated into both a transparent part and a translucent part which is visible to the naked eye, and
b) reduced the surface tension of water to $4.5 \times 10^{-2}$ N/m (45 dyne/cm) or less

when mixed with water at a concentration of 0.5% at 20°C and left to stand for one hour at the same temperature.

4 Although the product is a surface active agent, it is excluded from HS heading 3402 as it does not fulfil Note 3(a) to Chapter 34. Therefore, the product is not considered as an "organic surface active agent" of HS heading 3402. In

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55 Newton Road #07-01, Revenue House, Singapore 307987 Tel: (65) 6355 2000 Fax: (65) 6337 6361
E-mail: customs_classification@customs.gov.sg Website: www.customs.gov.sg

accordance to the General Interpretative Rules 1 & 6 of the HS, the product is classified under HS code 3824.90.99 of the Singapore Trade Classification, Customs & Excise Duty 2012.

5 This Customs ruling is made in exercise of the powers conferred under Section 29 of the Customs Act (Chapter 70).

6 This Customs ruling is valid at the time of issuance based on the Customs Act and its subsidiary legislation in force at the time of the issuance of this customs ruling. All matters within this customs ruling do not apply three years after the date of issuance, or the date a provision of the Customs Act (including its subsidiary legislation) is repealed or amended to the extent that the repeal or amendment changes the way that provision applies in this ruling, which ever comes earlier. This customs ruling may also be withdrawn or rescinded on the grounds stated in paragraph 7(9) of the Schedule to the Customs Act. For information on the classification of exports, please seek advice from the relevant authority in the importing country concerned.

Yours sincerely

Goh Yeow Meng
Head Tariffs and Trade Services
*for* Director-General of Customs
Singapore Customs

*(This is a computer-generated letter. No signature is required.)*

SINGAPORE CUSTOMS

Our Ref: 198502042C

02 Sep 2020

ETHOXYLATES MANUFACTURING PTE LTD
350 AYER MERBAU ROAD
JURONG ISLAND
SINGAPORE 628283

Attn: TAN LOU SEET

Dear Sir/Madam

VERIFICATION OF COST STATEMENT

We refer to your Manufacturing Cost Statement(s) (MCS) dated 01 Sep 2020 for export of the following product(s):

1. Product: FATTY ALCOHOL POLYOXYETHYLENE ETHER
   HS Code: 382499
   Model : ECOLAT S24-1
   Country: ASEAN-INDIA (RVC=99%, CTSH)

2. Product: FATTY ALCOHOL POLYOXYETHYLENE ETHER
   HS Code: 382499
   Model : ECOLAT S24-2
   Country: ASEAN-INDIA (RVC=99%, CTSH)

3. Product: FATTY ALCOHOL POLYOXYETHYLENE ETHER
   HS Code: 382499
   Model : ECOLAT S24-3
   Country: ASEAN-INDIA (RVC=99%, CTSH)

We are pleased to inform you that the MCS has been successfully verified. You may now proceed to apply for a Asean India FTA - Form AI (Cert type 27) for the export of the specific product(s) to the specified country(ies) based on the MCS.

This verification is valid for one year from 01 Sep 2020 or until there are changes to the details provided in the MCS which could alter the originating status of the product(s) concerned, whichever is earlier.

Yours sincerely

Tiffany Low
Senior Trade Officer, Tariffs & Trade Services (Rules of Origin)
*for* Director-General of Customs
Singapore Customs
This is a computer-generated letter. No signature is required.

The afore mentioned references, though may have persuasive value, clearly state that the classification of imported goods as per Harmonized System of nomenclature is under sub-heading 3824.90/3824.99 and not under sub-heading 3402.13 as claimed by the department.

11. In view of the above discussions and analysis of the factual matrix of the case, we are of the considered opinion that the impugned goods are appropriately classifiable under CTI 3824 9090/3824 9990 and not under CTI 3402 1300. Therefore, the impugned order dated 31.12.2021 passed by the learned Principal Commissioner of Customs in classifying the goods under CTI 3824 9090/3824 9990 does not require any interference. Since the demand of customs duty itself has been held as unsustainable on the merits of the case, the question of demand of interest and imposition of penalties on the respondents does not survive.

12. In the result, the impugned order is sustained and the appeal filed by Revenue is dismissed. Cross objection filed by the respondents importer stands disposed of.

(Order pronounced in open court on 21.08.2026)

**(S.K. MOHANTY)**
**MEMBER (JUDICIAL)**

**(M.M. PARTHIBAN)**
**MEMBER (TECHNICAL)**

*SM*