CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 87590 of 2025

[Arising out of Order-in-Original No. 92/2024-25/Commr./NS-I/CAC/JNCH dated 12.07.2024 passed by the Commissioner of Customs (NS-I), JNCH, Nhava Sheva, Mumbai Customs Zone-II.]

Sai Fertilizers & Phosphates Private Limited …. **Appellants**
Plot No. N-45, Additional Ambernath, MIDC
Ananad Nagar 21, Thane
Maharashtra – 421 501.

Versus

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

Appearance:

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

Shri Deepak Sharma, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86110/2026

Date of Hearing: 14.05.2026

Date of Decision: 11.09.2026

Per: M.M. PARTHIBAN

This appeal has been filed by the M/s Sai Fertilizers & Phosphates Private Limited, Thane (herein after, referred to as "the appellants", for short) assailing the Order-in-Original No. 92/2024-25/Commr./NS-I/CAC/JNCH dated 12.07.2024 passed by the Commissioner of Customs (NS-I), JNCH, Nhava Sheva, Mumbai Customs Zone-II, Mumbai.

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

2.2. The appellants herein are *inter alia* engaged in the manufacture of goods in their factory situated in MIDC, Anand Nagar 21, Thane and having their registered office at Kolkata. For the purpose of import and clearance of the goods described as ‘Alcohol Ethoxylate’ (Lauryl Alcohol Ethoxylate-LAE)’, of Two Moles of Ethylene Oxide bearing brand name – *Ecolat S24-2 Alcohol Ethoxylate* (of CAS No.68439-50-9), from the overseas supplier M/s Ecogreen Oleo Chemicals (Singapore) Pte Limited, Singapore. The appellants had filed various Bills of Entry (B/Es) before customs authorities at JNCH, Nhava Sheva 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 department indicated that the appellants 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 Live consignment of impugned goods covered by B/E No.4988518 dated 09.08.2021, in five containers, were put on hold by Customs Special Intelligence & Investigation Branch (SIIB-I) and the goods were examined under Pachamama proceedings dated 18.08.2021. Further, five representative samples of imported goods were drawn and sent to the Deputy Chief Chemist (Dy.CC), Central Revenue Control Laboratory, JNCH (CRCL). In the four test reports, all dated 27.08.2021 and one another test report dated 30.08.2021, it was concluded that imported goods may be considered as ‘Organic Surface-Active Agents’. On the above basis, the department had conducted detailed investigation on the case including recording of statements from all persons concerned, resuming various documents and records.

2.4 Based on the results of aforesaid chemical test reports and upon conclusion of the investigation, the department had initiated show case proceedings by issue of Show Cause Notice (SCN) dated 19.07.2022. In the said SCN, the department 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) *ibid* and also for imposition of penalties on the appellants under Sections 112(a) / 114A and/ or under Section 114AA ibid. In adjudication of the said SCN, learned Commissioner of Customs vide the impugned order dated 12.07.2024 has classified the goods under CTI 3402 1300, denying the benefit customs duty exemption claimed by the appellants-importer and also confirmed all the proposals made in the said SCN for imposition of penalties on the appellants. Feeling aggrieved with the impugned order, the appellants have filed this appeal before the Tribunal.

3.1 Learned Counsel appearing for the appellants stated that appellants had imported the goods declaring the description as Alcohol Ethoxylates having 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 in Bombay Test House Pvt. Ltd., he stated that these cannot be classified under CTH 34.02. In this regard, learned Counsel highlighted that the Test Reports dated 27.08.2021 & 30.08.2021 given by Dy.CC, CRCL, JNCH confirm that the sample in water "*produces translucent liquid with separation of insoluble matter*". Therefore, he emphasized that the impugned goods are not water insoluble.

3.2 Learned Counsel further stated that the phrase "without separation of insoluble matter" 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.

3.3 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, learned Counsel had stated that the appellants had rightly classified the impugned goods. Therefore, he stated that even if the Customs test reports suggest that the imported goods satisfy the reduction of surface tension parameter, the same are not classifiable under Heading 34.02 inasmuch 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, he submitted that imported goods being water insoluble surfactant will fall under Heading 38.24, and not under Heading 34.02. Thus, he submitted that the classification adopted by the department is incorrect.

3.4 As regards the classification of goods cleared by one another importer M/s Godrej Industries Limited, involving similar goods wherein the Commissioner of Customs had decided the issue in favour of importer, the learned Commissioner of Customs in the impugned order had recorded that such order of the Commissioner of Customs in the case of M/s Godrej Industries Limited has been reviewed by the competent authority and an appeal has been filed before the Tribunal, and therefore he is deciding the issue independently without reference to such order in the case of M/s Godrej. In this regard, we find that on an Writ Petition No.4657 of 2025 filed by the appellants, the Hon'ble Bombay High Court had vide order dated 26.08.2025 had allowed the withdrawal of such petition, with directions to the Tribunal to decide the case of the appellants as expeditiously as possible, without adverting to the issue of limitation.

4.1 On the other hand, 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 4.5×10^{-2} N/m (45 dyne/Cm) or less'. Since the chemical test reports indicate that such conditions are fulfilled, these are rightly classifiable as Fatty Alcohol Ethoxylates 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 impugned order can be sustained.

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

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

(i) whether the appellants-importer has mis-declared 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) of the Customs Act, 1962 and the appellants importer is liable for imposition of penalty under Sections 112(a)/114A, 114AA *ibid* or not;

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

7. The issue for consideration before us is determination of 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 adjudged demands confirmed in the impugned order is sustainable or not. The period of dispute involved in SCN dated 19.07.2022, is from 19.04.2018 to 03.09.2021.

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.

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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:

5.13 I find that the DYCC had forwarded Test Reports, which are shown in the brief facts of the case. The followings findings and observations were enumerated in the DYCC reports dated 23.08.2021& 30.08.2021 and the gist are reproduced below:

(i) The sample is in the form of **colorless liquid.**

(ii) Query related to the molar mass of the compound and molar mass of Ethylene Oxide present in the subject compound could not be verified.

(iii) The product is *partially* ***soluble in water.***

(iv) The surface tension of aqueous solution was found to be **23.61 dyne/cm, 24.5 dyne/cm, 24.09 dyne/cm, 32.72 dyne/cm and 34.02 dyne/cm.**

(v) The sample produces **translucent liquid** with separation of insoluble matter.

(vi) As per ***HSN chapter Note-34.02,*** the compound/products which are **not capable of** reducing the surface tension of distilled water to **45 dyne/cm or less** at a concentration of **0.5% at 20 degree Celsius** are not considered as **'Surface Active Agents'.** However, all the **five samples reduces** the surface tension of distilled water to 23.61 dyne/cm, 24.5 dyne/cm, 24.09 dyne/cm, 32.72 dyne/cm and 34.02 dyne/cm respectively and each of them individually to less than 45dyne/cm. Therefore, ***sample may be considered as 'Organic Surface Active Agents'.***

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In the instant case, the products imported by M/s. **Sai Fertilizers & Phosphates Pvt Ltd.** were ***Surface Active agent*** as evident from the evidences available on record and DYCC, JNCH. The word **'ALCOHOL ETHOXYLATE'** is not specifically mentioned either under CTH 3402 or CTH 3824. However, ***Fatty Alcohol Ethoxylate which are also known as "Surface Active Agent" are categorically included in Explanatory Notes to Harmonized Commodity Description and Coding System Volume 2 issued by World Customs Organization, Brussels under CTH 3402, and not mentioned/ included there-in-under CTH 3824. Therefore, the said products are more appropriately classifiable under CTH 3402.***

5.15.1 Further, the Chapter Note 3 of Chapter 34 states that:
"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"

<u>Organic Surface Active Agents (other than soap) described in Explanatory note to Chapter 3402 states that:</u>

- *"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."*

It appeared from the above chapter note and explanatory note to HSN that *"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,* it should give:

(a)

(i) either a "transparent liquid"; or

(ii) "translucent liquid", or

(iii) "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"

It appeared from the above Chapter Note & HSN explanatory note that as per condition (a), if the product gives translucent liquid then also it satisfies the condition (a) as there are three alternative conditions envisaged in chapter note 3 (a) i.e. (i) transparent liquid (ii) translucent liquid (iii) stable emulsion without separation of insoluble matter. If any one of the conditions out of these three conditions is satisfied, the condition (a) can be read as complied. If the product gives stable emulsion then only the condition of "without separation of insoluble matter" applies. In case of translucent liquid, the condition of "without separation of insoluble matter" does not appear to apply. If the wordings of condition (a) of Chapter Note 3 of Chapter 34 are framed as *"either a transparent or translucent or stable emulsion without separation of insoluble matter"* then the condition "without separation of insoluble matter" would apply to all the three components "transparent", "translucent" & "stable emulsion", but that is not the case. The word "liquid" after the word "translucent" in the condition 3(a) makes the term translucent liquid distinct from the wordings "stable emulsion without separation of insoluble matter" Further HSN explanatory note as mentioned above defines only "stable emulsion" and not "transparent or translucent liquid". Further, it is not a condition of the Chapter Note that transparent or translucent liquid should be formed in 100 percent of the solution. If the major part of the solution appeared to be translucent liquid and some droplets appear on the top of the solution, the mere presence of some droplets will not exclude it from the purview of translucent liquid. It is also undisputed by the importer that the product gives translucent liquid with water. In the instant case, Test report of DYCC, JNCH clearly indicated that sample gives the translucent liquid when mixed with water. It does not say that it gives stable emulsion.

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5.17 Further, the importer relied on the Order-In-Original No. 15/2021-22/Commr/NS0I/JNCH dated 31.12.2021 of Godrej Industries Ltd, which is identical to the facts of the present case and therefore the findings in the said order are squarely applicable to the facts of the present case. Therefore, they stated in the said order the Adjudicating Authority has already held in favour of the classification of the impugned goods under CTH 3824, the same be followed in the instant matter as well.

5.17.1 I find that the subject Order-In-Original No. 15/2021-22/Commr/NS0I/JNCH dated 31.12.2021 of **Godrej Industries Ltd, has not been accepted by the Reviewing Authority during review and the an Appeal has been filed before CESTAT challenging the subject Order-in-Original.** Therefore, the contention of the Importer in this regard is not sustained. Moreover, the Adjudicating Authority in the instant case and case that of M/s Godrej Industries Limited are of ***same level & competency.*** Hence, the Adjudicating Authorities may have different views/findings on such matters.

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5.19 In view of above, Considering the opinion of DYCC, JNCH, terms of Headings, relevant Section and Chapter notes, relevant case law etc. as discussed above, **I hold that the goods "ALCOHOL ETHOXYLATE" are classifiable under Tariff Heading 34021300.** Further, since the benefit under Sr. No. 449(I) of Customs Notification No.46/2011, is not available to goods under Tariff Heading 34021300, I hold that the duty benefit under aforesaid serial numbers of exemption notifications are not available to the impugned goods.

5.22 I have determined in the preceding paras that the Noticee had evaded correct Customs duty by intentionally mis-stated the facts & wrongly availed Customs duty exemption benefit of Serial No. 449(I) of Cus Not. No.46/2011, where the BCD is NIL instead of correct Sr. No.399(I) of the Cus Not. No.46/2011, where the BCD is 5%. By resorting to this deliberate suppression of facts and willful mis-classification, the Noticee has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. Thus, this willful and deliberate act was done with the fraudulent intention to claim ineligible lower rate of duty.

5.23 Therefore, I find that there is an element of 'mens rea' involved. The instant case is not a simple case of bona-fide wrong availment of Notification benefits by claiming lower rate of duty. Instead, in the instant case, the Noticee deliberately availed Customs duty exemption benefits to claim lower rate of duty, being fully aware of the wrong doings. This wilful and deliberate act clearly brings out their 'mens rea' in this case. Once the 'mens rea' is established on the part of the Noticee, the extended period of limitation, automatically get attracted.

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5.25 I have determined in the preceding paras that the Noticee had evaded correct Customs duty by intentionally mis-stated the facts & wrongly availed Customs duty exemption benefit of Serial No. 449(I) of Cus Not. No.46/2011, where the BCD is NIL instead of correct Sr. No.399(I) of the Cus Not. No.46/2011, where the BCD is 5%. Therefore, I find it clear that in respect of the Bills of Entry mentioned in the mentioned in the SCN with respect to past imports, such wrong claim of notifications benefit on the part of the Importer/Noticee has resulted into short levy of duty of Rs. 2,00,29,351/- , is recoverable from the Importer/Noticee under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.

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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, mainly on the basis of chemical test reports given by the Dy.CC, CRCL. Further, Chapter Note 3 of Chapter 34 along with HS Explanatory notes has been relied upon to classify the imported goods as OSAA 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 appellants. 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 :

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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.

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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;

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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:*

Tariff Item	Description of goods
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 4.5×10^{-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**.

xxx xxx xxx xxx

(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 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 Ethylene Oxide (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., *Ecolat S24-2 Alcohol Ethoxylate* is provided with common CAS Number 68439-50-9 which refers to Alcohols of 2 Mole, which is a low ethoxylated, non-ionic surfactant derived from C12–C14 fatty alcohols with 2 moles of ethylene oxide. This belongs to the group Lauryl Alcohol Ethoxylates which 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 non-ionic surfactant produced by ethoxylation of lauryl alcohol. It is 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 reports provide the folowing details about the imported goods. The extract of such five test reports dated 27.08.2021 and 30.08.2021 are given below:

Annexure - 6A RUD-2

Test Result

TEST REPORT No. TEST REPORT No.

Lab No. 313 SIIB (I) Lab Date: 23/8/21 Exanubed ia:

the sample is in the form of colourless liquid.

Query no 2(a) and 2(b) could not be verified here

Query no (3) product partially soluble in water

Query no (4) the surface tension of aqueous solution is 23.61 dyne/cm

Query no (5) the sample produce translucent liquid with separation of in soluble matter

Technical Opinion: Query no (6) As per HSN chapter note 3402 the compounds/products which are not capable of reducing the surface tension of distilled water to 45 dyne/cm or less at a concentration of 0.5% at 20°C are not consider as surface active agent

However sample u/r reduces the surface tension of distilled water to 23.61 dyne/cm. therefore It may be consider as organic surface active agent.

Analysed and returned to the Deputy Commissioner, SIIB(I) on: / and the Result/Technical opinion as above: Sealed remnant sample returned.

Remnant Sample Fully Consumed/Retained/returned:

M. Maity
27.08.2021

Dr. MRITUNJOY MAITY
डा. मृत्युन्ज्य माइति
CHEMICAL EXAMINER GR II
रसायन परीक्षक वर्ग II
Jawaharlal Nehru Custom House Laboratory
जवाहरलाल नेहरु सीमाशुल्क भवन प्रयोगशाला
Nhava Sheva न्हावा शेवा

Date:

P. Manikandan
27.08.2021
MANIKANDAN P.
Chemical Assistant

Chemical Examiner/Dy. Chief Chemist

Annexure - 6B

ROD-3

Test Result

TEST REPORT No. TEST REPORT No.

Lab No. 311 SIIB (I) Lab Date: 23|8|21 Exanubed Id:

The sample is in the form of colour less liquid.

Query no. 2 (a) and (b) could not be verified here.

Query no. (3) product is partially soluble in water.

Query no (4) The surface tension of aqueous solution is 24.5 dyne/cm.

Query no. (5) the sample produces translucent liquid with seperation of insoluble matter.

Technical Opninion: Query no. (6) As per HSN chapter note 34.02 The compound/products which are not capable of reducing the surface tension of distilled water to 45 dyne/cm or less at a concentration of 0.5% at 20°c are not considered as surface active agent. However the sample u/r reduces the surface tension of distilled water to 24.50 dyne/cm. Therefore it may be considered as

Analysed and returned to the Deputy Commissioner, SIIB(I) on: and the Result/Technical opinion as above: organic surface active agent.

Sealed remnant sample returned.

Romnant Sample Fully Consumed/Retained/returned:

Date:

C. dhal
30/08/2021
Dr. SRIDHAR UNDEELA
Chemical Assistant

M. Maity 30/08/2021
Dr. MRITUNJOY MAITY
डा. मृत्युन्ज्य माइति
CHEMICAL EXAMINER GR II
रसायन परीक्षक वर्ग II
Jawaharlal Nehru Custom House Laboratory
जवाहरलाल नेहरु सीमाशुल्क भवन प्रयोगशाला
Nhava Sheva न्हावा शेवा

Chemical Examiner/Dy. Chief Chemist

Annexure - 6C

KUD-4

Test Result

TEST REPORT No. TEST REPORT No.

Lab No. 312 SIIB (I) Lab Date: 13|8|21 Exanubed Id:

Report: The sample is in the form of colourless liquid.

Query no. (2) (a) and (b) could not be verified here.

Query no. (3): Product is partially soluble in water.

Query no. (4): The surface tension of aqueous solution is 24.09 dyne/cm.

Query no. (5): The sample produces translucent liquid with seperation of insoluble matter.

Query no. (6)

Technical Opinion: As per HSN Chapter Note 34-02, "the compounds, products which are ~~capable~~ not capable of reducing the surface tension of distilled water to 45 dyne/cm or less at a concentration of 0.5% at 20°C are not considered as surface active agent." However the sample u/r reduces the surface tension of distilled water to 24.09 dyne/cm. Therefore it may be considered as organic surface active agent.

Sealed remnant returned.

27/08/21

Analysed and returned to the Deputy Commissioner, SIIB(I) on: and the

Result/Technical Opinion as above.

MOHD. YUNUS A.
Asstt. Chemical Examiner

M. Maity 27.08.2021

Remnant Sample Fully Consumed/Retained/returned:

Dr. MRITUNJOY MAITY
डा. मृत्युन्जय माइति
CHEMICAL EXAMINER GR II
रसायन परीक्षक वर्ग II
Jawaharlal Nehru Custom House Laboratory
जवाहरलाल नेहरु सीमाशुल्क भवन प्रयोगशाला
Nhava Sheva न्हावा शेवा

Date:

Chemical Examiner/Dy. Chief Chemist

Annexure - 6D

Test Result RUD-I

TEST REPORT No. TEST REPORT No.

Lab No. 310 SIIB(I) Lab Date: 23/8/21 Exanubed Id:

Report - The sample as received is in the form of colourless liquid.
Query No. 2 (a) and (b) could not be verified noc.
Query No. (3), product is partially soluble in water.
Query No. (4). The surface tension of aquous solution is 32.72 dyne/cm.
Query No. (5), The sample produce translucent liquid with separation of insoluble matter.

Technical Opninion:
Query No. (6), As per HSN chapter Note 34.02, The compound/products which are not capable of reducing the surface tension of distilled water to 45 dyne/cm or less at a concentration of 0.5% at 20°c are not considered as surface active agent.
However the sample u/r reduces the surface tension of distilled water to 32.72 dyne/cm, therefore it may be

Analysed and returned to the Deputy Commissioner, SIIB(I) on: and the Result/Technical opinion as above: considered as organic surface active agent.

Remnant Sample Fully Consumed/Retained/returned: sealed remnant sample returned.

M. Maity 27.8.2021
Dr. MRIT[illegible]JOY MAITY
डा. मृत्युन्जय माइति
CHEMICAL EXAMINER GR II
रसायन परीक्षक वर्ग II
Jawaharlal Nehru Custom House Laboratory
जवाहरलाल नेहरु सीमाशुल्क भवन प्रयोगशाला
Nhava Sheva न्हावा शेवा

Date: 27/08/2021
Dr. Raineesh Kumar Sharma
Chemical Assistant

Chemical Examiner/Dy. Chief Chemist

Annexure - 6E

RUD-6

Test Result

TEST REPORT No. TEST REPORT No.

Lab No. 314 SIID (I) Lab Date: 23/8/21 Exanubed Id:

The sample is in the form of colourless liquid.
Query no 2 (a) and (b) could not be verified here
Query no (3) product partially soluble in water
Query no (4) the surface tension of aqueous solution 24.81 dyne/cm
Query no (5) the sample produce translucent liquid with separation of insoluble matter
Query no (6) As per HSN chapter note 34.02 the compound/products which are not capable of reducing the surface tension

Technical Opninion: of distilled water 45 dyne/cm or less at a concentration of 0.5% at 20°C are not consider as surface active agent.

However the sample u/r reduces the surface tension of distilled water to 24.81 dyne/cm. Therefore It may be consider as organic surface active agent

Sealed remnant sample returned.

Analysed and returned to the Deputy Commissioner, SIIB(I) on: and the Result/Technical opinion as above:

Remnant Sample Fully Consumed/Retained/returned:

M. Maity 27.8.21
Dr. MRITUNJOY MAITY
डा. मृत्युन्जय माइति
CHEMICAL EXAMINER GR II
रसायन परीक्षक वर्ग II
Jawaharlal Nehru Custom House Laboratory
जवाहरलाल नेहरु सीमाशुल्क भवन प्रयोगशाला
Nhava Sheva न्हावा शेवा

Date: P. Manikandan 27.08.2021
MANIKANDAN P.
Chemical Assistant.

Chemical Examiner/Dy. Chief Chemist

As per the above test reports, the samples have been considered as an organic surface-active agent on the basis that it reduces surface tension to the desired levels. 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 produce *translucent liquid with separation of insoluble matter*". 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 in the case of *Godrej Industries Limited*, involving identical facts of the case the issue of classification of goods viz., 'Dehydol LS1 TH (One Mol Alcohol Ethoxylate 1214)' was dealt in Customs Appeal No.85996 of 2022. In the Final Order No. A/86060/2026 dated 21.08.2026, issued by this Co-ordinate Bench of the Tribunal, after examining the disputed issue in detail, and it has been held that the appropriate classification of the goods is under CTI 3824 9090/3824 9990. Since, in the impugned order learned Commissioner have also placed reliance on the similarity of the issue under dispute with that of Godrej Industries Limited case (supra), we find that the conclusion arrived therein in the Final Order dated 21.08.2026 in the case of *Commissioner of Customs (NS-I), Nhava Sheva* Vs. *Godrej Industries Limited* (supra) are also equally apply to the present appeal.

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 as held in the impugned order. Therefore, the impugned order dated 12.07.2024 passed by the learned Commissioner of Customs in classifying the goods under CTI 3402 1300 does not stand the scrutiny of law. 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 appellants does not survive.

12. In the result, the impugned order is set aside and the appeal filed by appellants is allowed in their favour.

(Order pronounced in open court on 11.09.2026)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

SM