CASE NO.:
Appeal (civil) 1836 of 2001

PETITIONER:
M/s. H.P.L. Chemicals Limited

RESPONDENT:
Commissioner of Central Excise, Chandigarh

DATE OF JUDGMENT: 20/04/2006

BENCH:
ASHOK BHAN & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
with
C.A. Nos.7500-7501 of 2004

Bhan, J.

These appeals pertain to the same issue. For the sake of convenience, the facts are taken from Civil Appeal No.1836 of 2001.

The assessee-appellant (for short "the appellant") being aggrieved by the final order No.526/2000/C dated 7.12.2000 passed by the Central Excise and Gold (Control) Appellate Tribunal, New Delhi (for short "the Tribunal") in Appeal No.E/2154/2000-C has filed the present appeal under Section 35-L of the Central Excise Act, 1944 (for short "the Act"). The Tribunal by the impugned order has set aside the order of the Commissioner (Appeals) classifying 'Denatured Salt' under the Chapter Heading 25.01 and held that 'Denatured Salt' is classifiable under the Chapter Heading No.38.24 of the Central Excise Tariff Act, 1985 (for short "the Tariff Act").

FACTS

Appellant is a limited company incorporated under the Companies Act, 1956 and is engaged in the manufacture of Hydrazine falling under the Chapter Heading No.28.25 of the Tariff Act. Appellant, during the course of manufacture of the final product produces residuary by-product, i.e., 'Denatured Salt'. Appellant filed classification list claiming classification of the said product under the Heading No. 25.01 carrying 'Nil' rate of duty.

Divisional Preventive Officers of the Central Excise visited the plant of the appellant and observed that the raw materials used by the appellant are Urea, Caustic Soda (Sodium Hydroxide) and Chlorine Gas. The process of manufacture followed by the appellant, as stated in the show cause notice based on the report of the prevent staff is as under: Caustic Soda and Chlorine Gas are reacted in a closed tank and transferred to another tank. In the said other tank Urea is

mixed. The mixture is then heated upto 100 centigrade with the help of steam. Chemical reaction starts in the tank and on completion of it, Hydrazine in liquid form gets generated. It is removed to another tank through pumps. From this tank, the materials in limited quantities are taken to evaporator tank where Hydrazine evaporates along with water and passes through a condenser and is collected. The remaining material in the evaporator tank is taken into centrifuge. In the centrifuge, out of the remaining materials, solids and liquids are separated. The liquid form centrifuge is again passed through the evaporator tank and, in turn, through condenser to collect Hydrazine. This process is continued for all remaining liquids and is a continuous process for further retrieval of Hydrazine. The residue solid which remains in the centrifuge is taken out from its bottom and it is in the form of white crystalline powder and which is sold by the appellant as Denatured Salt. It is this product whose classification is in dispute in the present case.

On the basis of the report submitted by the Preventive staff, the Deputy Commissioner of Central Excise,
Chandigarh issued two show cause notices dated 28.2.1997 and 12.3.1997 requiring the appellant to show cause as to why :

(a) Central Excise Duty amounting to Rs.12,21,863/- should not be recovered under Rule 9(2) of the Central Excise Rules, 1944.
(b) Interest on the said duty be not recovered under Section 11AB of the Act.
(c) Penalty should not be imposed under Section 11AC, Rules 9(2) and 173Q of the Central Excise Rules, 1944.
(d) The appellant’s product should not be classified under Chapter Heading No.38.23 against 25.01 as claimed by the Appellants.

Appellant in reply to the show cause notices took a number of points, relevant ones of which are:
1. That in the common parlance the product in dispute is described as Denatured Salt.
2. That the end use of the product is also as a replacement of the common salt.
3. That the classification of a mixture is to be decided according to the dominance of the constituent.
4. That Chemical Examiner report supports that the product is a salt in denatured form, i.e., impure and is not usable as edible salt, because it contains sodium carbonate which is not fit for human consumption.
5. That only those residual products are classifiable under Heading No.38.24 which are not elsewhere specified or included.
6. That it is not necessary that sodium chloride should be an input for the manufacture of Denatured Salt.

7. That it is not the intention of the legislature that first salt should be produced and thereafter it should be denatured because the legislation was fully aware that impure/inedible salt is available whether natural or through some chemical process that is why it appear on the HSN.
8. That even six month's period is not available to the department for the raising of the demand and the entire demand is without the authority of law.

After considering the replies filed by the appellant, the Deputy Commissioner of Central Excise, Chandigarh decided both the said notices by order in original dated 31.3.1999. By the said order the Deputy Commissioner held that the subject product was correctly classifiable under Heading No. 38.23 (now 38.24) and he accordingly confirmed the demand of duty and directed the appellant to deposit the same along with the interest. It was further held that since there was no material on record to indicate any suppression or mis-statement of facts, a case for imposing the penalty was not made out. Against the order passed by the Deputy Commissioner, the appellant filed an appeal before the Commissioner (Appeals), Central Excise and Customs, Chandigarh, who allowed the same by order in appeal dated 28.3.2000 by holding that the subject product was classifiable under Heading 25.01 of the Tariff Act.

Aggrieved by the order passed by the Commissioner (Appeals) the Revenue filed appeal before the Tribunal which has been accepted by the impugned order. The Tribunal has set aside the order passed by the Commissioner (Appeals) and restored that of the adjudicating authority. It has been held that the subject product was classifiable under Heading 38.24.

The Tribunal has set aside the order of the Commissioner (Appeals) primarily by recording the following 4 findings:

1. Firstly, by referring to the titles of Section V and Chapter 25 of the Central Excise Tariff the Tribual has held that in order to be covered under Chapter 25, the goods must be "mineral products" and that these must be salt, sulphur, clay and stone, plastering materials, lime and cement.
2. That since the starting raw materials were not classifiable under Chapter 25, the residue in question cannot be a product covered by Chapter 25.
3. That the Denatured Salt is a residue of the chemical industry covered by Chapter 38. It is not elsewhere specified and provided.
4. The residue in the instance case being from Hydrazine, which is a chemical product would be classifiable under Chapter 38.24 which was a

specific heading for such products.

Before adverting to the legal submissions addressed by the learned counsels appearing for the assessee and the Revenue, it would be relevant to detail two important findings on fact recorded by the authorities below.

The Central Excise Authorities conducted market enquiry through the Assistant Commissioner of Central Excise, Chandigarh and the said enquiry inter alia revealed as under:-

"The enquiry revealed that instant goods were being consumed by the local soap manufacturers as a filler in the detergent and as a substitute of the common salt. As these manufacturers of soaps had started purchasing the goods only for a few years since the noticee started producing and supplying the same under the name of 'denatured salt' in their invoices, the goods were known to the localized consumers by this name only".

This fact has been recorded in the order in original dated 31.3.1999 passed by the Deputy Commissioner, Central Excise, Chandigarh.

The subject product was sent for examination by the authorities to the Central Examiner of Central Revenue Control Laboratories (in short "CRCL"). The CRCL found the subject product to be composed of Sodium Chloride, Sodium Carbonate and other inorganic salts. It was opined by CRCL that the subject product is to be taken as Sodium Chloride. The report of CRCL as quoted in the order of the Commissioner (Appeals) dated 28.3.2000 is reproduced below:-

"being composed of Sodium Chloride, Sodium Carbonate and other inorganic salts"

Sodium Chloride Content - 53.6%
Sodium Carbonate Content - 19.6%
Moisture at 100o C - 9.0%
Is to be taken as "Sodium Chloride"

STATUTORY PROVISIONS:

Heading Nos. 25.01 and 38.23 of the Central Excise Tariff are reproduced below for reference:-

"Head -ing No. Sub- Heading

No.	Description of Goods	Rate of duty
25.01	2501.00 Salt (including table salt and denatured salt) and pure sodium chloride, whether or not in aqueous solution or containing added anti-caking or free flowing agents	Nil
38.23	3823.00 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; residual products of the chemical or allied industries, not elsewhere specified or included"	20%

Heading 25.01 is a specific heading covering "Denatured Salt" by name. The fact that the product in question is a "Denatured Salt" is clear from the test report of the Chemical Examiner, CRCL, who has found that the product comprises of 53.6% Sodium Chloride and "is to be taken as Sodium Chloride". This test report was obtained by the Central Excise authorities themselves from their own Chemical Examiner. Even as per market and trade enquiries conducted by the Central Excise Department itself, it was found that the said goods are being consumed by local soap manufacturers as a filler in the detergent and as a substitute of the common salt; these are purchased and sold as "Denatured Salt" and are known to the local consumers by this name only. Thus, as per the said market and trade enquiries conducted by the Central

Excise Department the goods in question are bought and sold as "Denatured Salt".

The explanatory notes below Heading No.25.01 in the Harmonized Commodity Description and Coding System (in short "HSN") are reproduced below:-

"This heading relates to sodium chloride, commonly known as salt. Salt is used for culinary purposes (cooking salt, table salt), but it also has many other uses and, if necessary, may be denatured to render it unfit for human consumption.

The heading includes:
(A) Salt which is extracted from underground:
- either by conventional mining (rock salt),
- or by solution mining (water is injected under pressure into a layer of salt and returns to the surface as saturated brine).

(B) Evaporated salt:
- solar salt (sea salt) is obtained by evaporation of sea water by the sun;
- refined salt is obtained by evaporation of saturated brine.

(C) Sea water, brine and other saline solutions.
The heading also covers:
(1) Salt (e.g., table salt) which has been slightly iodised, phosphated, etc., or treated so that it will remain dry.
(2) Salt to which anti-caking agents or free-flowing agents have been added.
(3) Salt which has been denatured by any process.
(4) Residuary sodium chloride, in particular that left after chemical processing (e.g., electrolysis) or obtained as a by-product of the treatment of certain ores."

As per HSN this Heading 25.01 relates to sodium chloride, commonly known as salt. Salt is not only used for culinary purposes i.e., cooking salt, table salt, but it also has many other uses and, if necessary, may be denatured to render it unfit for human consumption. The heading includes Salt extracted from underground, evaporated salt, sea water salt obtained by evaporation of sea water by the sun, refined salt obtained by evaporation of saturated brine and other saline solutions and also covers table salt, salt to which anti-caking agents

or free-flowing agents have been added, salt which has been denatured by any process and also covers residuary sodium chloride, in particular that left after chemical processing or obtained as a by-product of the treatment of certain ores.

As per CRCL Report, apart from 53.6% Sodium Chloride, subject product also contains Sodium Carbonate. It is derived due to chemical reaction of caustic soda, chlorine gas and urea and is unfit for human consumption. This position was also clarified in the statement of the appellant's representative Shri Surinder Singh Chawla, who stated that the subject product is "Sodium Chloride" which is the technical name of the salt and known in the market as such. That it is unfit for human consumption and was used only for industrial applications such as by soap manufacturers as filler in the detergents and the same was not used for human consumption.

As per the fourth category mentioned in the explanatory notes in the HSN, Chapter Heading 25.01 covers, inter alia, "residuary Sodium Chloride, in particular that left after chemical processing". The subject product fully answers the fourth category of goods covered by Chapter Heading 25.01 as per HSN. Even, according to the process of manufacture described in the show cause notice, the subject product arises as a residuary product left after the chemical processing for the manufacture of Hydrazine. The Chemical Examiner of the Department has also opined that the said product "is to be taken as Sodium Chloride". The explanatory notes, below Chapter Heading 25.01 of the HSN make it clear that the sodium chloride which is obtained by the chemical processing would be covered by the Chapter Heading 25.01.

By referring to the titles of Section V and Chapter 25 of the Central Excise Tariff, Tribunal has held that in order to be covered by Chapter 25 the goods must be "mineral products" and these must be Salt, Sulphur, Clay and Stone, plastering materials, lime and cement. This finding of the Tribunal is totally incorrect and is contrary to Rule 1 of the Rules for Interpretation of Central Excise Tariff which is reproduced below:-

"1. The titles of Sections and 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 provisions hereinafter contained."

It is specifically provided in Rule 1 of the Interpretative Rules, titles of Sections and Chapters are provided for ease of reference only and for legal purposes classification must be

determined according to the terms of the headings and relative section or Chapter notes. Tribunal has totally failed to consider the said interpretation of Rule 1.

The Tribunal has further held that since the starting raw materials were not classifiable under Chapter 25, the residue in question cannot be a product covered by Chapter 25. This finding is based on wrong assumptions and reasoning. There is no such requirement in law that before a product is classified under Chapter 25 it must be manufactured out of raw materials falling under Chapter 25. It goes against the explanatory notes of HSN below Heading No.25.01.

The Tribunal has further held as under:-

"....On a study of the process of manufacture we find that certain chemicals are reacted, none of these chemicals are classifiable under chapter 25, thus the Residue in question cannot be a product obtained after chemical processing e.g. (electrolysis). None is a bye-product of a treatment of certain ores. The product is obtained after crystallisation. The product is obtained as a bye-product or Residue while manufacturing Hydrazine. Hydrazine is admittedly a chemical. Thus the Residue in the instant case is nothing but a residue of chemical and allied industries. We note that there is specific heading for Residue of chemical and allied industries under the present chapter Heading 38.24. Since there is specific heading, we need not go to decide the issue by resorting to be Rules for interpretation of tariff. These Rules are attracted only when the heading is not specific or the product is a composite one."

The aforesaid reasoning of the Tribunal in our view is incorrect. Heading No.38.23 (which was subsequently renumbered as Heading No.38.24) is a residuary heading which applied only to "residual products of chemical and allied industries, not elsewhere specified or included". The Tribunal totally erred in picking up the expression "residue of chemical and allied industries" and on that basis holding as if the said heading is a specific heading. It is on such wrong assumption that the Tribunal further proceeded to hold that Rules for Interpretation of the Tariff are irrelevant. Thus the entire reasoning of the Tribunal is totally misconceived and untenable. Tribunal has missed the words "not elsewhere specified or included". In the present case, we find that "Denatured Salt" is specifically included in Chapter Heading No.25.01.

During the course of hearing, learned senior counsel appearing for the Revenue relying on Chapter note 2 of Chapter 25 of the Central Excise Tariff submitted that in order to be classified as "Denatured Salt" under Heading No.25.01, the starting raw material must be salt and the product must not contain any impurities. Chapter note 2 is reproduced below:-

"2. Except where their context otherwise requires, heading Nos.25.01, 25.03 and 25.05 cover only products which have been washed (even with chemical substances, eliminating the impurities without changing the structure of the product), crushed, ground, powdered, levigated, sifted, screened, or concentrated by flotation, magnetic separation or other mechanical or physical processes (except crystallization), but not products that have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading or sub-heading."

On a reading of Chapter note 2 of Chapter 25 we find that there is no requirement or condition anywhere either in Chapter note 2 or in any other provision of law that the starting material must itself be salt. The process adopted by the appellant as mentioned in paragraph 3 of the show cause notice is a physical process. In the said process Hydrazine is concentrated by physical process and the residual solids are obtained as "Denatured Salt". These residuals are the residuary Sodium Chloride left after chemical processing which fully answers the fourth category of explanatory notes in HSN. Apart from this, similar chapter notes also appears in Chapter No.1 of Chapter 25 in HSN which clearly provides that residuary Sodium Chloride left after chemical processing is covered by Heading No.25.01. Chapter note 2 does not provide anywhere that in order to be covered by Heading No.25.01 the product must not contain impurities. The bracketed portion in Chapter note 2 is being totally misread by the Revenue. The only effect of the bracketed portion is that if the goods in question are washed, such wash may be even with chemical substances eliminating the impurities without changing the structure of the product. It is not as if Chapter note 2 provides that in order to be covered by Heading No.25.01, all impurities must be removed. Similarly, it is not provided either in Chapter 25 of the Central Excise Tariff or in Chapter note 2 or in HSN that in order to be covered by Heading No.25.01, the starting material must be salt. Residuary Sodium Chloride left after chemical processing is clearly covered by Heading No.25.01 as per HSN.

Even by applying Rues 2(b), 3(a) and 3(b) of the "Rules for the Interpretation" of the Central Excise Tariff (which are part of the Central Excise Tariff Act, 1985) the subject product is to be treated as Sodium Chloride as the same is unfit for human consumption. Rules 2(b), 3(a) and 3(b) of the Interpretative Rules is set out below:-

" 2(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 contained in rule 3.

3. When by application of sub-rule (b) of rule 2 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, 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, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable."

Rule 2(b) provides that 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. The classification of goods consisting of more than one material or substance shall be according to the principles contained in Rule 3. Sub-rule 3(a) provides that heading which provides for most specific description shall be

preferred to headings providing a more general description. Sub-rule 3(b) provides that mixtures, composite goods consisting of different materials or made of a different components, and goods put up in sets, which cannot be classified with reference to sub-rule (a) of Rule 3, shall be classified as if they consisted of the material or component which gives them their essential character. In the present case, the goods in question admittedly contain 53.6% Sodium Chloride and their essential character is derived by the Sodium Chloride, which is salt. Since in the present case the salt is unfit for human consumption, the same would be classifiable as "Denatured Salt" under the specific Heading No.25.01 and not under Heading 38.23 which is a residuary Heading.

This apart, classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue. If the Department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. In the present case the said burden has not been discharged at all by the Revenue. On the one hand, from the trade and market enquiries made by the Department, from the report of the Chemical Examiner, CRCL and from HSN, it is quite clear that the goods are classifiable as "Denatured Salt" falling under Chapter Heading No. 25.01. The Department has not shown that the subject product is not bought or sold or is not known or is dealt with in the market as Denatured Salt. Department's own Chemical Examiner after examining the chemical composition has not said that it is not denatured salt. On the other hand, after examining the chemical composition has opined that the subject matter is to be treated as Sodium Chloride.

It has been held by this Court in number of judgments that burden of proof is on the Revenue in the matter of classification. In Union of India and others Vs. Garware Nylons Limited and others, 1996 (10) SCC 413, in para 15 this Court held as under:-

"15. In our view, the conclusion reached by the High Court is fully in accord with the decisions of this Court and the same is justified in law. The burden of proof is on the taxing authorities to show that the particular case or item in question is taxable in the manner claimed by them. Mere assertion in that regard is of no avail. It has been held by this Court that there should be material to enter appropriate finding in that regard and the material may be either oral or documentary. It is for the taxing authority to lay evidence in that behalf even before the first adjudicating authority. Especially in

a case as this, where the claim of the assessee is borne out by the trade enquiries received by them and also the affidavits filed by persons dealing with the subject-matter, a heavy burden lay upon the Revenue to disprove the said materials by adducing proper evidence. Unfortunately, no such attempt was made. As stated, the evidence led in this case conclusively goes to show that Nylon Twine manufactured by the assessee has been treated as a kind of Nylon Yarn by the people conversant with the trade. It is commonly considered as Nylon Yarn. Hence, it is to be classified under Item 18 of the Act. The Revenue has failed to establish the contrary. We would do well to remember the guidelines laid down by this Court in Dunlop India Ltd. v. Union of India, AIR 1977 SC 597 at page 607. in such a situation, wherein it was stated (AIR p.607 : SCC p 254, para 35):--

"..... When an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause."

Similarly, in Hindustan Ferodo Limited Vs. Collector of Central Excise, Bombay, 1997 (2) SCC 677, it is held in para 4 as under:-

"It is not in dispute before us, as it cannot be, that the onus of establishing that the said rings fell within Item 22-F lay upon the Revenue. The Revenue led no evidence. The onus was not discharged. Assuming therefore, that the Tribunal was right in rejecting the evidence that was produced on behalf of the appellants, the appeal should, nonetheless, have been allowed".

It was submitted by the learned senior counsel appearing for the Revenue that the goods were classifiable under Heading No.38.23 (now 38.24) as "residuary products of chemical or allied industries not elsewhere specified or included" which was the last item covered by Heading No.38.23. The said Heading No.38.23 is only a residuary heading covering residual product of chemical or allied industries "not elsewhere specified or included". In the present case since the goods were covered by a specific heading, i.e., Heading No. 25.01, the same cannot be classified under the residuary heading at all.

This position is clearly laid down in Rule 3(a) of the Interpretative Rules set out above. As per the said Interpretative Rule 3(a), the heading which provides the most specific description shall be preferred to the heading providing a more general description. This position is also well settled by a number of judgments of this Court. Reference may made to M/s. Bharat Forge and Press Industries (P) Ltd. Vs. Collector of Central Excise, Baroda, Gujarat, 1990 (1) SCC 532. It was observed in para 4 inter alia as under:-

"4. The question before us is whether the Department is right in claiming that the items in question are dutiable under tariff entry 68. This, as mentioned already, is the residuary entry and only such goods as cannot be brought under the various specific entries in the tariff should be attempted to be brought under the residuary entry. In other words, unless the department can establish that the goods in question can by no conceivable process of reasoning be brought under any of the tariff items, resort cannot be had to the residuary item...."

Similarly, in Dunlop India Ltd. Vs. Union of India & Others, 1976 (2) SCC 241, this Court held:-

".....When an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause. The question of competition between two rival classifications will, however, stand on a different footing."

Looking from any angle it cannot be held that the subject product would fall under the sub-heading 38.34 (now 38.24). It would fall under the specific Heading 25.01 as has been claimed by the assessee/appellant in the classification list filed by it.

For the reasons stated above, these appeals are accepted and the impugned orders are set aside with consequential effects. Parties will bear their own costs.