REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1766 OF 2009

COMMISSIONER OF CENTRAL EXCISE ...APPELLANT

VERSUS

MADHAN AGRO INDUSTRIES (I) PVT. LTD. ...RESPONDENT

WITH

CIVIL APPEAL Nos.6703-6710 OF 2009

J U D G M E N T

RANJAN GOGOI, J.

1. Aggrieved by the orders passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) (hereinafter referred to as 'the Tribunal') holding that the coconut oil manufactured and packed in "small containers" by the respondent(s)-assessee(s) is classifiable under Heading 1513 and not under Heading 3305 of the Central Excise Tariff Act, 1985 (hereinafter referred to as 'the Act'), the Revenue is in appeal before us.

2. The dispute is with regard to classification of coconut oil in packings upto 2 litres in case of M/S Madhan Agro Industries the respondent-assessee in Civil Appeal No.1766 of 2009 and packings upto 500ml in case of the respondent(s)-assessee(s) in the connected appeals i.e. Civil Appeal Nos.6703-6710 of 2009. The relevant period of assessment in all the appeals under consideration is subsequent to the amendment of the First Schedule to the Central Excise Tariff Act, 1985 by the Amendment Act of 2004 (5 of 2005) which came into force on 28.2.2005.

3. The facts, in brief, may be noted at the outset:

The respondent-asessee in Civil Appeal No.1766 of 2009 i.e. M/S Madhan Agro Industries Private Limited is/was a manufacturer of 100% pure coconut oil marketed under the brand name "Shanthi". In Civil Appeal Nos.6703-6710 of 2009 the assesses are four job-workers of M/S Marico Limited who had received 100% pure coconut oil from Marico Limited in bulk and thereafter had packed the same in small packages which

were supplied back to Marico as per dispatch schedules issued. The packages in question carried a declaration that they contain 100% pure coconut oil. The trademark "Parachute" is also inscribed on the packs. In Civil Appeal No.1766 of 2009, the packings also included pouches of 5 ml. All the packs are marked as "edible oil".

4. It may also be noticed at this stage that the packing sizes conform to the requirement of Clause 5 of Schedule I of the Edible Oil packaging (Regulation) Order 1998 read with serial No.10 Schedule III of the Standards of Weights and Measures (packaged commodities) Rules 1977.

5. While the assessee(s) contended that coconut oil in small packings is also classifiable as coconut oil under Heading 1513 the revenue claimed classification of the said products as "hair oil" under Heading 3305 while conceding that coconut oil in large packings i.e. beyond 2 Kgs. merited classification under Heading 1513. This is the core dispute between the parties in the present case.

6. The relevant Headings before and after the

Amendment of the Central Excise Tariff Act effective 28-02-2005 will require a specific notice and is therefore extracted below:

BEFORE AMENDMENT

CHAPTER 15

ANIMAL OR VEGETABLE FATS AND OILS AND THEIR CLEAVAGE PRODUCTS; PREPARED EDIBLE FATS; ANIMAL OR VEGETABLE WAXES

NOTES

1. This Chapter does not cover :

   (a) pig fat or poultry fat;

   (b) cocoa butter, fat and oil (Chapter 18);

   (c) Edible preparations of Chapter 21;

   (d) Greaves and residues of Chapter 23;

   (e) Fatty acids, prepared waxes, medicaments, paints, varnishes, soap, perfumery, cosmetic or toilet preparations, sulphonated oils or other goods of Section VI; or

   (f) Factice derived from oils (Chapter 40).

2. Soap-stocks, oil foots and dregs, stearin pitch, glycerol pitch and wool grease residues fall in heading No.15.07

3. In this Chapter, the expression 'fixed vegetable oils' means oils which cannot easily be distilled without decomposition, which are not volatile and which cannot be carried off by superheated steam (which decomposes and saponifies them).

4. In relation to the products of sub-heading Nos.1502.00, 1503.00, 1504.00 and 1508.90, labeling or relabeling of containers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to "manufacture".

Heading No.	Sub-heading No.	Description of goods	Rate of duty
15.01	1501.00	Animal (including fish) fats and oils,	Nil

		crude, refined or purified	
15.02	1502.00	Fixed vegetable oils, the following, namely cotton seed oil, neem seed oil, karanj oil, silk cotton seed oil, rice bran oil, khakhan oil, palm oil, water melon oil, sal oil, mahua oil, kusum oil, rubber seed oil, mango kernel oil, kokum oil, dhupa oil, undi oil, maroti oil, pisa oil and nahor oil, and their fractions.	8%
15.03	1503.00	Fixed vegetable oils, other than those of heading No.15.02	8%
15.04	1504.00	Vegetable fats and oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinised, whether or not refined but not further prepared.	8%
15.05	33.03.00	Omitted	8%
15.06	1506.00	Glycerol, Crude, Glycerol Waters and Glycerol lyes	16%
15.07	1507.00	Vegetable waxes (other than triglycerides), beeswax, other insect waxes and spermaceti, whether or not refined or coloured; degras; residues resulting from the treatment of fatty substances of animal or vegetable waxes	16%
15.08		Margarine; edible mixtures or preparations of animal or vegetables fats; animal or vegetable fats and oils, boiled, oxidized, dehydrated, sulphurised, blown, polymerized by heat in vacuum or in inert gas or otherwise chemically modified; inedible mixtures or preparations of fats and oils of this Chapter	16%
	1508.10	-Linoxyn	16%
	1508.90	-Other	8%

BEFORE AMENDMENT

CHAPTER 33

ESSENTIAL OILS AND RESINOIDS; PERFUMERY, COSMETIC OR TOILET PREPARATIONS

Notes :

1. This Chapter does not cover :

(a) Natural oleoresins or vegetable extracts of heading No.13.01;

(b) Soap or other products of heading 34.01;

(c) Gum, wood or sulphate turpentine or other products of Chapter 38; or

(d) Perfumery, cosmetics and toilet preparations containing alcohol or opium, Indian hemp or other narcotics and for this purpose, these expressions have the meanings respectively assigned to them in Section 2 of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955).

2. Heading Nos.33.03 to 33.07 apply, inter alia, to products, whether or not mixed (other than aqueous distilltes and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings with labels, literature or other indications that they are for use as cosmetics or toilet preparations or put up in a form clearly specialised to such use and includes products whether or not they contain subsidiary pharmaceutical or antiseptic constituents, or are held out as having subsidiary curative or prophylactic value.

3. The 'perfumery, cosmetic or toilet preparations' in heading No.33.07 applies, *inter alia*, to the following products : scented sachets; perfumed papers and papers impregnated or coated with cosmetics; contact lens or artificial eye solutions; wadding, felt and nonwovens, impregnated, coated or covered with perfume or cosmetics; animal toilet preparations.

4. In relation to products of heading Nos.33.03, 33.04 and 33.05, conversion of powder into tablets, labelling or relabelling of containers intended for consumers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the products marketable to the consumer, shall be construed as 'manufacture'

5. Heading No.33.04 applies, inter alia, to the following products : beauty creams, vanishing creams, cold creams, make-up creams, cleansing creams, skinfoods, skin tonics, face powders, baby powders, toilet powders, talcum powders and grease paints, lipsticks, eye shadow and eyebrow pencils, nail polishes and varnishes, cuticle removers and other preparations for use in manicure or chiropody and barrier creams to give protection against skin irritants.

6. Heading No.33.05 applies, inter alia, to the following products; brilliantines, perfumed hair oils, hair lotions, pomades and creams, hair dyes (in whatever form), shampoos, whether or not containing soap or organic surface active agents.

7. The expression "odoriferous substances" in heading 33.02 refers only to the substances of heading No.33.01 to odoriferous constituents isolated from those substances or to synthetic aromatics.

Chapter 33 Cosmetic or toilet preparations, essential oils etc.			
Heading No.	Sub-heading No.	Description of goods	Rate of duty
33.05		Preparations for use on the hair	
	3305.10	-Perfumed for use on the hair -Other	16%
	3305.91	-Hair fixer	16%
	3305.99	-Other	16%

POST AMENDMENT

CHAPTER 15

Animal or Vegetable fats and Oils and their cleavage products; prepared edible fats; Animal or Vegetable Waxes

NOTES

1. This Chapter does not cover :

(a) pig fat or poultry fat of heading 0209;

(b) cocoa butter, fat or oil (heading 1804);

(c) edible preparations containing by weight more than 15% of the products of heading 0405 (generally Chapter 21);

(d) greaves (heading 2301) or residues of headings 2304 to 2306;

(e) fatty acids, prepared waxes, medicaments, paints, varnishes, soap, perfumery, cosmetic or toilet preparations, sulphonated oils or other goods of Section VI; or

(f) factice derived from oils (heading 4002).

2. Heading 1509 does not apply to oils obtained from olives by solvent extraction (heading 1510).

3. Heading 1518 does not cover fats or oils or their fractions, merely denatured, which are to be classified in the heading appropriate to the corresponding undenatured fats and oils and their fractions.

4. Soap stocks, oil foots and dregs, stearin pitch, glycerol pitch and wool grease residues fall in heading 1522.

5. In relation to the products of heading 1507 or 1508 or 1509 or 1510 or

1511 or 1512 or 1513 or 1514 or 1515, or 1518; sub-heading 1516 20 or 1517 90; or tariff item 1517 10 10 or 1517 10 21 or 1517 10 29, labelling or relabelling of containers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to 'manufacture'.

6. In relation to refined edible vegetable oils falling under headings 1507 to 1515, the process of refining, that is to say, any one or more of the processes, namely, treatment of crude oil with an alkali, bleaching and deodorisation, shall amount to 'manufacture'.

Sub-heading Note :

1. For the purpose of sub-headings 1514 11 and 1514 19, the expression "low erucic acid rape or colza oil" means the fixed oil which has an erucic acid content of less than 2% by weight.

Supplementary Notes :

1. In this Chapter, "edible grade", in respect of a goods (i.e. edible oil) specified in Appendix B to the Prevention of Food Adulteration Rules, 1955, means the standard of quality specified for such goods in that Appendix.

2. In this Chapter, "fixed vegetable oil" means oils which cannot easily be distilled without decomposition, which are not volatile and which cannot be carried off by superheated steam (which decomposes and saponifies them).

Tariff Item	Description of Goods	Unit	Rate of duty
1513	Coconut (copra), plam kernet or babassu oil and fractions thereof, whether or not refined, but not chemically modified		
	-Coconut (copra) oil and its fractions :		
1513 11 00	-Crude oil	kg.	8%
1513 19 00	-Other -Palm kernel or babassu oil and fractions thereof:	kg.	8%
1513 21	-Crude oil :		
1513 21 10	-Palm kernel oil	kg.	8%
1513 21 20	-Babassu oil	kg.	8%
1513 29	-Other		
1513 29 10	-Palm kernel oil and its fractions	kg.	8%
1513 29 20	-Babassu oil and its fractions edible grade	kg.	8%
1513 29 30	-Babassu oil and its fractions, other than edible grade	kg.	8%
1513 29 90	-Other	kg.	8%

POST AMENDMENT

CHAPTER 33

Essential Oils and Resinoids, Perfumery, Cosmetic or Toilet Preparations

NOTES

1. This Chapter does not cover:

a) natural oleoresins or vegetable extracts of heading 1301 or 1302;

(b) soap or other products of heading 3401;

(c) gum, wood or sulphate turpentine or other products of heading 3805; or

(d) perfumery, cosmetics and toilet preparations containing alcohol or opium, Indian hemp or other narcotics and for this purpose, these expressions have the meanings respectively assigned to them in section 2 of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955).

2. The expression "odoriferous substances" in heading 3302 refers only to the substances of heading 3301, to odoriferous constituents isolated from those substances or to synthetic aromatics.

3. Headings 3303 to 3307 apply, inter alia, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use.

4. The expression "perfumery, cosmetic or toilet preparations" in heading 3307 applies, inter alia, to the following products: cented sachets; odoriferous preparations which operate by burning; perfumed papers and papers impregnated or coated with cosmetics; contact lens or artificial eye solution; wadding, felt and nonwovens, impregnated, coated or covered with perfume or cosmetics; animal toilet preparations.

5. In relation to products of headings 3303, 3304 and 3305, conversion of powder into tablets, labelling or relabelling of containers intended for consumers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the products marketable to the consumer, shall be construed as 'manufacture'.

Tariff Item	Description of Goods	Unit	Rate of

			duty
3305	Preparations for use on the hair		
3305 10	-Shampoos :	kg.	16%
3305 10 10	– Containing spirit	kg.	16%
3305 10 90	– Other		
3305 20 00	-Preparations for permanent waving or straightening	kg.	16%
3305 30 00	-Hair lacquer		
3305 90	*-Other :* *– Hair oil :*		
3305 90 11	– Perfumed	kg.	16%
3305 90 19	--Other	kg.	16%
3305 90 20	– Brilliantines (spirituous)	kg.	16%
3305 90 30	– Hair cream	kg.	16%
3305 90 40	– Hair dyes (natural, herbal or synthetic)	kg.	16%
3305 90 50	– Hair fixers	kg.	16%
3305 90 90	– Other	kg.	16%

7. We may now take note of the arguments advanced on behalf of the rival parties:

Shri Panda, learned Senior Counsel appearing for the appellant-Union of India has urged that a process of interpretation and consideration of the Rules of General Interpretation and relevant Chapter Notes contained in the Act alongwith the results of the market survey undertaken by the Revenue would lead to the conclusion that classification claimed by the Revenue is fully justified and learned Tribunal (CESTAT) was not correct in rejecting the same. Specifically, Shri Panda has

referred to the Rule 1 of the General Rules for the Interpretation of the Schedule to the Tariff Act; Chapter Note 1 (e) to 15; Section Note 2 to Section VI and Chapter Note 3 to Chapter 33 in support of the contentions advanced. Apart from relying on the aforesaid provisions of the Act, Shri Panda has submitted before the Court that an elaborate market survey of the product undertaken had indicated that coconut oil in smaller packages are understood in the market and purchased as 'hair oil' and not as 'edible oil'. Relying on several decisions of this Court, the details of which would be noticed later, Shri Panda has submitted that classification of the product must follow the Common Parlance Test in which event the coconut oil in dispute is eminently classifiable under Chapter 33, Heading 3305 and not under Chapter 15, Heading 1513 as claimed by the assessee.

8. On the other hand, Shri Bagaria, learned Senior Counsel for the respondents-assessees has submitted that none of the provisions relating to Interpretation of the Schedule to the Act and the Chapter Notes relied

upon by the Revenue would be applicable and relevant to the present case so as to warrant classification of the product under Chapter 33. Infact, Shri Bagaria has urged that prior to the coming into force of the Amendment Act 5 of 2005, the classification of coconut oil was claimed and allowed under Chapter 15 Heading 1503 which dealt with Fixed vegetable *oils*. It is only after the amendment that Heading 1513 was incorporated dealing specifically with coconut oil. Shri Bagaria has also pointed out that amendment made in the year 2005 effective from 28.02.2005 was for the sole purpose of fine tuning of the tariff with the Harmonised System of Nomenclature (HSN). In this regard, Shri Bagaria has drawn attention to the Statement of Objects and Reasons of the Amendment Bill wherein it had been clearly stated that the *"Department of Revenue has developed eight digit classification code based on Harmonised System of Nomenclature (HSN) for the purpose of classification of excisable goods in India*". Shri Bagaria has also drawn attention of the Court to the fact that in the aforesaid Objects and Reasons, it has been

further stated that *"the proposed amendment does not make any change in the existing rates of the central excise duties and hence the proposed changes do not involve revenue implication".*

9. Referring to the provisions of General Rules for Interpretation and the Chapter and Section Notes relied upon by Shri Panda and drawing the attention of the Court to the Chapter Note 3 and Explanatory Note to Chapter Note 3 in the Harmonised System of Nomenclature (HSN), Shri Bagaria has submitted that there is no manner of doubt that coconut oil, regardless of the size of packings, is classifiable under Chapter 15 of the Tariff Act and by no means, even remotely, under Chapter 33, specifically Heading 33.05 which deals with *"preparations for use on the hair".* In this regard Shri Bagaria has contended that there is no dispute on the fact that on all the packages of coconut oil cleared by or on behalf of the respondents-assesses, the inscription *"edible oil"* has been clearly affixed and there is no advertisement/declaration/ representation to the effect that the coconut oil is meant or intended for used as hair

oil. In this regard, Shri Bagaria has also drawn the attention of the Court to Central Excise Notification No.145/56/95-CX dated 31.08.1995 whereby the following points were clarified by the CBEC in paragraphs 5 to 9 of the Circular with regard to classification of coconut oil prior to the Amendment of the Act in the Year 2005 :

> (i) The Heading 33.05 covers "preparations for use on the hair". Coconut oil is not a preparation for use on the hair. It is fixed vegetable oil capable of being used as cooking medium (or for other purposes including for application on the hair). In the absence of any proof that it is specially prepared for use on the hair or any label/literature/indications on the containers to that effect, the subject goods cannot be classified under heading 3305 simply because they were packed in small containers and applied by some sections of the society on the hair.
>
> (ii) Coconut oil, whether pure or refined and whether packed in small or large containers merits classification under Heading 1503.
>
> (iii) Only if the containers bear labels/literatures etc. indicating that it is meant for application on hair as specified in Note 2 of Chapter 33 and/or if the coconut oil is used as additives or has undergone a process which make it a "preparation for use on hair", that coconut oil may merit classification under Chapter 33.

10. It is submitted that having regard to the object behind the Amendment effected in the year 2005, the efficacy of the above circular, though issued when Chapter No.2 of Chapter 33 (already extracted) was in force, would continue even in the post amendment era when Chapter No.2 has now been substituted by Note 3

(Chapter 33).

11. An order dated 03.06.2009 of the Central Board of Excise and Customs (CBEC) under Section 37B of the Central Excise Act has been placed before us. The said order is to the effect that if coconut oil is packed in containers upto 200 ml it may be considered generally for use as hair oil. If, however, the same coconut oil is packed in one litre or two litres pack, classification would be under Chapter 15 as coconut oil. It has been urged by Shri Bagaria that the learned Appellate Tribunal in ***Rajasthan Oil Mills Vs. Commissioner of Central Excise***[1] had taken the view that repacking of coconut oil from bulk containers in retail pack of 200 ml or less would not make the item classifiable under Chapter 33. It is submitted that the Revenue's Appeal against the aforesaid order of the learned Tribunal i.e. Civil appeal Nos.2023-2037 of 2014 has been dismissed by this Court by Order dated 07-12-2014 following which the CBEC has issued another circular bearing no.1007/14/2015-CX dated 12-10-2015 withdrawing the earlier Circular

[1] ***2014 (314) ELT 541 (Tribunal)***

dated 03-06-2009 and directing that the issue of classification may be decided by the field officers "taking into consideration the facts of the case read with the judicial pronouncements".

12. Disputes with regard to classification may arise in different situations and circumstances. Whether a particular item/product would fall under one or the other Chapter/Heading of a Chapter is one such situation. A dispute may also arise on a claim that though the item falls within a particular Heading, owing to multifarious reasons, some part of the same item may fall under another Heading of the same Chapter or a different Chapter altogether. All disputes with regard to classification of goods manufactured and cleared has to be primarily decided and resolved within the frame work of the Act and on the basis of Rules for Interpretation and the various Chapter Notes and Supplementary Notes contained in the Tariff Act. The understanding of the CBEC and other authorities exercising jurisdiction under the Act in respect of the Rules for Interpretation and the Chapter Notes, as may be reflected in the

Circulars/Memos issued from time to time, can be an useful aid in understanding and resolving disputed issues of classification. The Harmonised System of Nomenclature (HSN) and the Chapter Notes and Explanatory Notes thereto, on which the Tariff Act has been remodelled by the Amendment, has been repeatedly acknowledged by this Court to be a safe guide for resolution of disputes with regard to classification under the Tariff Act. The opinions rendered by this Court in ***Collector of Central Excise, Shillong Vs. Wood Craft Products Ltd.***[2]***; Commissioner of Customs and Central Excise, Goa Vs. Phil Corporation Limited***[3]***; O.K. Play (India) Ltd. Vs. Commissioner of Central Excise, Delhi-III, Gurgaon***[4] may be illustratively referred to in this regard. These are the different tools that would be available to the Court to deal with disputes with regard to classification which must be resorted to in the first instance.

13. To what extent the common parlance test would

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[2] ***(1995) 3 SCC 454***
[3] ***(2008) 17 SCC 569***
[4] ***(2005) 2 SCC 460***

be applicable in determining the classification of the product in question is the first question that may be dealt in view of the very emphatic arguments made on behalf of the Revenue on this question.

14. Shri A.K. Panda, learned Senior Counsel for the Revenue has urged that a detailed market survey undertaken by the Revenue indicated that the consumers who purchase "coconut oil" in small containers invariably make the said purchase for use as hair oil and not as edible oil. It has, therefore, been urged by Shri Panda that the product in dispute in the present case i.e. "coconut oil" in small packings should be classified under Heading 3305 and not under Heading 1513. To support the contention advanced Shri Panda has referred to several pronouncements of this Court wherein it has been held that the object of classification of goods for the purpose of Central Excise and other Fiscal Legislation is to raise the revenue and, therefore, scientific and technical meaning must be avoided and the particular product as understood in trade and in common parlance should be preferred.

15. In ***Indo-International Industries vs. Commissioner of Sales Tax, U.P.***[5] where the common parlance test was adopted to resolve the dispute of classification this Court was dealing with the question as to whether hypodermic clinical syringes could be regarded as "glass ware" under Entry No.39 of the First Schedule to the U.P. Sales Tax Act, 1948.

16. Similarly, in ***Asian Paints India Ltd. vs. Collector of Central Excise***[6] the question before this Court was whether "Decoplast" manufactured by the Asian Paints India Ltd. was classifiable under Tariff Item No. 14(1)(3)(iv) of the First Schedule of the Central Excise Tariff as "plastic emulsion paint" or under Tariff Item No.14(1)(v) as "paints not otherwise specified".

17. In ***Shree Baidyanath Ayurved Bhavan Ltd. vs. Collector of Central Excise, Nagpur***[7] the issue before this Court was as to whether Dant Manjan Lal manufactured by the Assessee was medicine so as to be

[5]1981 (8) E.L.T. 325 (S.C.)
[6]1988 (35) E.L.T. 3 (S.C.)
[7](1996) 9 SCC 402

covered by Exemption Notification No.62/78-CE dated 1st March, 1978 or a toilet preparation.

18. In ***Alpine Industries vs. Collector of Central Excise, New Delhi***[8] the question that arose for consideration before this Court was whether "Lip Salve" is classifiable under Heading 33.04 of the Central Excise Tariff Act, 1985 as "a preparation for care of skin" or whether as a "medicament" under Heading 30.03 thereof.

19. In all the aforesaid decisions, this Court has held that- [Paragraph 5 in Alpine Industries (supra)]:

> "5. It is well established that in interpreting tariff entries in taxation statute like the Excise Act, where the primary object is to raise revenue and for that purpose various products are differently classified, the entries are not to be understood in their scientific and technical meaning. The terms and expressions used in tariff have to be understood by their popular meaning that is the meaning that is attached to them by those using the product. See the decision of the Supreme Court on the dispute regarding classification for excise duty, the product – Lal Dant Manjan manufactured by Shree Baidyanath Ayurved Bhavan Ltd. reported in the case of Shree Baidyanath Ayurved Bhavan Ltd. v. CCE[9]. The

[8](2003) 3 SCC 111
[9] (1996) 9 SCC 402

> manufacturer claimed the product to be an Ayurvedic medicinal preparation product for dental care. The view of the Tribunal was upheld by this Court by holding (at SCC pp.404-05, para 3) that "ordinarily a medicine is prescribed by a medical practitioner and it is used for a limited time and not every day unless it is so prescribed to deal with a specific disease like diabetes"."

20. A consideration of the facts of the cases, referred to above, however, would go to show that the basic dispute/conflict in the said cases was whether a product which was not defined or specifically dealt with by any of the Headings/Entries would fall under one or another Heading/Entry of the Central Excise Tariff Act. The present is not a case where the identity of the product would require any debate as was the issue in the cases referred to above where the common parlance test was applied. In the present case, the product is "coconut oil", which is clearly covered by Chapter Heading 1513 and not by Chapter Heading 3305. What calls for a decision in the present case is whether "coconut oil" which otherwise is covered by Heading 1513 of Chapter 15, if packed in small containers and pouches/sachets, would cease to be "coconut oil" falling under Chapter Heading 1513 and

would be covered by Heading "preparations for use on the hair" covered by Entry 3305 of Chapter 33. This is a question which has to be resolved not on the basis of the perception of the consumer or the customer but on the basis of the headings and sub-headings and on an interpretation of the provisions of the relevant Chapter Notes, if required. Issues of classification have to be resolved within the framework of the statutory provision. "Coconut oil" packed in small packages/containers does not cease to be "coconut oil" and become "hair oil" though such "coconut oil" may be capable of being used for both purposes. The understanding of the product in the market or amongst the consumers will always have a limited role in this regard. The above has been the view of this Court in ***O.K. Play (India) Ltd. Vs. Commissioner of Central Excise, Delhi-III, Gurgaon*** *(supra)* (para 13) and ***Commissioner of Customs and Central Excise, Goa Vs. Phil Corporation Ltd***. *(supra)* (para 17).

21. We may now turn to examine the General Rules

for Interpretation and the Chapter Notes relied upon by the Revenue.

"[THE FIRST SCHEDULE] – EXCISE TARIFF

RULES FOR THE INTERPRETATION OF THIS SCHEDULE

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.

2. (a) Any reference in a heading to goods shall be taken to include a reference to those goods incomplete or unfinished, provided that, the incomplete or unfinished goods have the essential character of the complete or finished goods. It shall also be taken to include a reference to those goods complete or finished (or falling to be classified as complete or finished by virtue of this rule), removed 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 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 sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
(c) when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

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.

5. 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-heading 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.

Chapter Note 1(e) to Chapter 15

CHAPTER 15

Animal or Vegetable fats and Oils and their cleavage products; prepared edible fats; Animal or Vegetable Waxes

NOTES

1. This Chapter does not cover :

(a) xxxxxx

(b) xxxxxx

(c) xxxxxx

(d) xxxxxxxx

(e) fatty acids, prepared waxes, medicaments, paints, varnishes, soap, perfumery, cosmetic or toilet preparations, sulphonated oils or other goods of Section VI; or"

SECTION NOTE II to SECTION VI

SECTION VI

PRODUCT OF THE CHEMICAL OR ALLIED INDUSTRIES

Notes :

1. xxxxxx

2. Subject to Note 1 above, goods classifiable in heading 3004, 3005, 3006, 3212, 3303, 3304, 3305, 3306, 3307, 3506, 3707 or 3808 by reason of being put up in measured doses or for retail sale are to be classified in those headings and in no other heading of this Schedule.

Chapter Note 3 to Chapter 33

CHAPTER 33

ESSENTIAL OILS AND RESINOIDS; PERFUMERY, COSMETIC OR TOILET PREPARATIONS

Notes :

1. xxxxx

2. xxxxx

3. Headings 3303 to 3307 apply, inter alia, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of

essential oils), suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use.

22. It has already been noticed that under the pre-amended provisions of the Act coconut oil was not covered by any specific Heading and had been classified under Heading 15.03 which dealt with fixed vegetable oils, other than those of heading No.15.02.

23. On the other hand prior to the amendment Heading 33.05 dealing with preparations for use on the hair was in the following terms:

33.05		Preparations for use on the hair		
	3305.10	--Perfumed hair oils	16%	
		--Other :		
	3305.91	–Hair fixer		16%
	3305.99	-Other	16%	

---

24. Heading 15.13 of the Harmonised System of Nomenclature (HSN) specifically deals with coconut oil in the following manner:

"15.13 COCONUT (COPRA), PALM KERNEL OR BABASSU OIL AND FRACTIONS THEREOF, WHETHER OR NOT REFINED, BUT NOT CHEMICALLY MODIFIED (+)

-	Coconut (copra) oil and its fractions :
1513.11	- Crude oil
1513.19	- Other
-	Palm kernel or babassu oil and fractions thereof:
1513.21	- Crude oil
1513.29	- Other"

25. Heading 33.05 of the HSN is in the following terms:

"33.05	-	PREPARATIONS FOR USE ON THE HAIR
3305.10	-	Shampoos
3305.20	-	Preparation for permanent waving or straightening
3305.30	-	Hair lacquers
3305.90	-	Other

The Heading covers :

(1) Shampoos, containing soap or other organic surface-active agents (see Note 1(c) to Chapter 34), and other shampoos. All these shampoos may contain subsidiary pharmaceutical or disinfectant constituents, even if they have therapeutic or prophylactic properties (see Note 1(d) to Chapter 30)
(2) Preparations for permanent waving or straightening
(3) Hair lacquers (sometimes known as "hair sprays")
(4) Other hair preparations, such as brilliantines, hair oils, creams ("pomades") and dressings: hair dyes and bleaches used on the hair, cream-rinses.

26. After coming into force of the amendment, Headings 1513 and 3305 in Chapters 15 and 33 virtually incorporated the contents of the Headings and sub-headings as contained in the Harmonised System of Nomenclature (HSN). The position that is noticeable following the amendment of the Tariff Act is that a specific Heading for coconut oil has been introduced in the Tariff Act. So far as *"preparation for use on the hair"* is concerned, the sub-headings have made various such items more specific. Significantly and noticeably coconut oil as a preparation for use as hair oil is not included in Heading 3305 or any of its Sub-Headings.

27. Chapter Note 3 of Chapter 33 makes it clear that Heading 3305, *inter alia,* would apply to products "*which are suitable for use as goods mentioned in the Heading and if they are put up in packings of a kind sold by retail for such use*". Heading 3305 deals with *"preparations for use on the hair".* In the present case, it is not in dispute that in the packings of coconut oil the inscription "edible oil" is mentioned. There is no representation, declaration or advertisement in the packings that the same can be or is meant to be used as a hair oil.

28. Chapter Note II of Chapter 33 prior to amendment and which has been substituted by Chapter Note 3 was more explicit in requiring packing put up with:

> "labels, literature or other indications that they are for use as cosmetics or toilet preparations or put up in a form clearly specialized to such use and includes products whether or not they contain subsidiary pharmaceutical or antiseptic constituents, or are held out as having subsidiary curative or prophylactic value."

However, the changes brought about/deletions made by the amendment would hardly be significant inasmuch

as Chapter Note 3 of Chapter 33 (post-amendment) introduced by the Amendment Act in place of the erstwhile Chapter No.2 is identical with Chapter 3 Note of Chapter 33 in Harmonised System of Nomenclature (HSN) which must guide and illuminate the correct process of interpretation and understanding. Furthermore, there is an explanatory note in the Harmonised System of Nomenclature relating to Chapter Note 3 the relevant part of which is as follows:

General

> "Headings 33.03 to 33.07 include products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings of a kind sold by retail for such sue (see Note 3 to this Chapter).
>
> The products of headings 33.03 to 33.07 remain in these headings whether or not they contain subsidiary pharmaceutical or disinfectant constituents, or are held out as having subsidiary therapeutic or prophylactic value (see Note 1(d) to Chapter 30). However, prepared room deodorizers remain classified in heading 33.07 even if they have disinfectant properties of more than a subsidiary nature.
>
> Preparations (e.g. varnish) and unmixed products (e.g., unperfumed powdered talc, fuller's earth, aceton, alum) which are suitable for other uses in addition to those described above are classified in these headings only) when they are :
> (a) In packings of a kind sold to the consumer and put up with labels, literature or other indications that they are for use as perfumery, cosmetic or toilet preparations, or as room deodorisers; or
> (b) Put up in a form clearly specialised to such use (e.g. nail varnish put up in small bottles furnished with the brush required for applying the varnish). "

29. Explanatory note to Chapter Note 3 of HSN makes the contents of the Chapter Note more clear. In

order to classify a product under tariff Item No.3305 of the Act, the requirements of Clauses (a) and (b) of the Explanatory Note to Chapter Note 3 of Harmonised System of Nomenclature (HSN) would be required to be satisfied and the goods/packages must be put up with labels/literatures and other indications that they are meant for use as perfumery, cosmetic and toilet preparations or the goods must be put up in a form clearly specialised for such use as *for example* nail varnish must be put up in small bottles accompanied with a brush. No such situation exists in respect of the coconut oil in question. The absence of any explanatory note to Chapter Note 3 of Chapter 33 of the Central Excise Tariff Act on the same terms as in the HSN would hardly make any difference in the conclusion to be reached in view of the clear and consistent pronouncement of this Court first expressed in ***Collector of Central Excise, Shillong Vs. Wood Craft Products Ltd.*** (supra) to the following effect:

> "**12.** It is significant, as expressly stated, in the Statement of Objects and Reasons, that the Central excise tariffs are based on the HSN and the internationally accepted

nomenclature was taken into account to "reduce disputes on account of tariff classification". Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the HSN. This being the expressly acknowledged basis of the structure of Central excise tariff in the Act and the tariff classification made therein, in case of any doubt the HSN is a safe guide for ascertaining the true meaning of any expression used in the Act. The ISI Glossary of Terms has a different purpose and, therefore, the specific purpose of tariff classification for which the internationally accepted nomenclature in HSN has been adopted, for enacting the Central Excise Tariff Act, 1985, must be preferred, in case of any difference between the meaning of the expression given in the HSN and the meaning of that term given in the Glossary of Terms of the ISI.

18. We are of the view that the Tribunal as well as the High Court fell into the error of overlooking the fact that the structure of the Central excise tariff is based on the internationally accepted nomenclature found in the HSN and, therefore, any dispute relating to tariff classification must, as far as possible, be resolved with reference to the nomenclature indicated by the HSN unless there be an express different intention indicated by the Central Excise Tariff Act, 1985 itself. The definition of a term in the ISI Glossary, which has a different purpose, cannot, in case of a conflict, override the clear indication of the meaning of an identical expression in the same context in the HSN. In the HSN, block board is included within the meaning

> of the expression "similar laminated wood" in the same context of classification of block board. Since the Central Excise Tariff Act, 1985 is enacted on the basis and pattern of the HSN, the same expression used in the Act must, as far as practicable, be construed to have the meaning which is expressly given to it in the HSN when there is no indication in the Indian tariff of a different intention."

30. The views expressed by this Court as to when the HSN can be ignored including the view in ***Camlin Limited Vs. Commissioner of Central Excise, Mumbai***[10] are not contrary to what has been expressed herein; rather the said views have been expressed in situations where the legislative intention to depart from the HSN is clear and unambiguous. Illustratively, the HSN would not permit the Court to import an entry mentioned in the HSN but not in the Tariff Act. The same principle will however not apply to the Chapter notes and the Explanatory notes which are tools for understanding the Entries/Headings. The opinions in ***O.K. Play (India) Ltd. Vs. Commissioner of Central Excise, Delhi-III, Gurgaon*** (supra) and ***Commissioner***

[10] (2008) 9 SCC 82

of Customs and Central Excise, Goa Vs. Phil Corporation Limited (supra) reiterating the view in ***Collector of Central Excise, Shillong Vs. Wood Craft Products Ltd.*** (supra) and the specific stress on the Chapter Notes and explanatory notes in the HSN as permissible and useful aids in understanding the Headings/entries in the Central Excise Tariff Act cannot be lost sight of.

31. The photo personality of a cine star with flowing, hair, as urged on behalf of the Revenue, may not be convincingly determinative. Also the fact that some of the smaller containers of coconut oil have nozzles for release of drops of coconut oil from the container will not satisfy the above requirement inasmuch as the materials collected by the Revenue in the course of adjudication proceedings indicate that the amount of coconut oil used in cooking, at times, may be, minimum.

32. The above conspectus of fact can reasonably lead to the conclusion that the coconut oil in dispute in the present case would be more appropriately classifiable under Chapter 15, Heading 1513. If the above is a possible and

reasonable conclusion and we are inclined to hold as such, the contention of the Revenue with regard to application of Rules 1 and 3 of the General Rules for Interpretation; Chapter Note 1(e) to Chapter 15; Note 2 to Section VI will not at all be relevant in this regard. The legislative history behind Chapter 15; the words and expressions in Heading 1513 of the Tariff Act; the relevant Heading i.e. 1513 in the HSN and the conditions/requirements stipulated in Chapter Note 3 of Chapter 33 of the Central Excise Tariff read in the light of the relevant provisions of Chapter Note 3 along with the explanatory notes of Chapter 33 of the HSN, all, would lead to the irresistible conclusion that coconut oil is classifiable under Heading 1513 of Chapter 15 of the Central Excise Tariff Act. In this regard, it may be noticed that Rule 3 of the Rules of General Interpretation would apply only in a situation where the product is classifiable under two different Chapters, a position that does not exist in the present case. At the same time, Chapter Note 1(e) to Chapter 15 and Note 2 to Section VI would be applicable only if the product i.e. coconut oil would unambiguously fall under any of the Headings under Section VI, a position that cannot be accepted.

33. A contention has been advanced on behalf of the Revenue that "*Parachute*" is a registered trademark of Marico and goods are being marketed under the aforesaid trade mark for use as hair oil. The issue of registered trade mark and classification for the purpose of levy of Central Excise Tariff are unrelated and unconnected to each other. Registration of a trademark under any particular class cannot be determinative of the classification of the product for purposes of Central Excise Tariff. Moreover, in the present case, Marico had/has obtained registration of its trade mark "*Parachute*" under different classes including edible oil (Class 29) as well as hair oil lotions, hair preparations under Class 3.

34. The contents of Circular bearing No. No.145/56/95-CX dated 31.08.1995 at a point of time when Chapter Note II of Chapter 33 was in force has already been noticed and infact the relevant paragraphs 5 to 9 of the above Circular, extracted above, makes it clear that a product cannot be classified under Chapter 33 Heading 3305 in the absence of any proof that it is specially

prepared *"for use on the hair"* and in the absence of any label/literature etc on the container to such effect. Merely because the product is packed in small containers and used by some sections of the customers as hair oil cannot be a valid basis for classification under Heading 3305. Only if the containers bear labels/literature indicating that it is meant for use on the hair that the coconut oil in dispute may merit classification under Chapter 33. The above position would continue to hold the field notwithstanding the substitution of Chapter Note II by Chapter Note 3 w.e.f. 28-02-2005 in view of the similar stipulations and conditions incorporated in Chapter No.3 of the HSN read with the Explanatory Note 3 thereto which the Court would be obliged to take into account.

35. The Order under Section 37B of the Central Excise Act dated 3.6.2009 discussed above is infact a virtual admission on the part of the Revenue that coconut oil packed in containers upto 200 ml alone would be classifiable under Chapter 33 and the larger packages even of 1/2 litres would fall under Chapter 15. In the absence of the essential stipulations under Chapter Note 3 of

Chapter 33, discussed above, in respect of the product in question there can be no justification for the direction contained in the order/circular dated 3.6.2009. The learned Appellate Tribunal in ***Raj Oil Mills Vs. Commissioner of Central Excise*** *(supra), therefore,* took the view that even small packets of 200 ml or less would be more appropriately classifiable under chapter 15 as coconut oil and not as hair oil under Chapter 33. The said decision of the Tribunal has been affirmed by this Court and the appeals by the Revenue (Civil Appeal Nos.2023-2037 of 2014) have been dismissed on 7.12.2014. The dismissal of the appeals, though by a non-speaking order, is one on merit and therefore the order of the Tribunal in ***Raj Oil Mills*** (supra) can be understood to have merged with the decision of this Court as held in ***V.M. Salgaocar & Bros. Pvt. Ltd. Vs. Commissioner of Income Tax***[11].

36. For the aforesaid reasons, we take the view that the coconut oil in small packings in respect of which the present dispute with regard to classification has arisen is more appropriately classifiable under Chapter 15, Heading

[11] **(2000) 5 SCC 373**

1513 and not under Chapter 33, Heading 3305. Consequently while dismissing the appeals filed by the Revenue, we affirm the Orders to the above effect passed by the learned Appellate Tribunal.

.....J.
(RANJAN GOGOI)

NEW DELHI
APRIL 13, 2018.

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1766 OF 2009

COMMISSIONER OF CENTRAL EXCISE, SALEM …Appellant

Versus

M/S MADHAN AGRO INDUSTRIES (I) PVT. LTD. ...Respondent

WITH

CIVIL APPEAL NOS. 6703-6710 OF 2009

COMMISSIONER OF CENTRAL EXCISE, PONDICHERRY …Appellant

Versus

M/S AISHWARYA INDUSTRIES AND ORS. ...Respondents

J U D G M E N T

R. BANUMATHI, J.

I have gone through the judgment by His Lordship Justice Ranjan Gogoi and I am unable to agree with the reasonings and the conclusion. I am of the view that in view of the amended provisions of Chapter Note 3 to Chapter 33 and Section Note 2 to Section VI, 'Coconut Oil' packed in small sachets/containers, as they are suitable for use on hair are classifiable under Chapter 33 and not under Chapter 15. Following are the reasonings for my conclusion.

2. Whether *'Coconut Oil'* manufactured and packed in small containers and sachets by the respondent, is classifiable under Chapter Heading **3305** ("*Hair Oil*", "*Other*") as claimed by the Revenue or under Chapter **15** Heading **1513** : Coconut (Copra) oil as claimed by the respondent, *is the*

point falling for consideration in these appeals.

3. The competing entries for classification as claimed by the appellant-Revenue and the respondent/assessee are as under:-

Classification by the Appellant	**Classification by the Respondent**
3305 PREPARATIONS FOR USE ON THE HAIR	**1513** COCONUT (COPRA), PALM KERNEL OR BABASSU OIL AND FRACTIONS THEREOF, WHETHER OR NOT REFINED, BUT NOT CHEMICALLY MODIFIED
3305 90 ***- Other***	- Coconut (copra) oil and its fractions:
--- Hair Oil	
3305 90 19 ***---- Other***	***1513 11 00*** ***- - Crude Oil (or)***
	1513 19 00 ***- - Other***

4. Chapter 33 deals with "*Essential oils and Resinoids, Perfumery, Cosmetic or Toilet Preparations*". Tariff Item **33 05** reads as under:-

"3305		**Preparations for use on the hair**
3305 10	**-**	**Shampoos**
3305 10 10	**- - -**	**Containing spirit**
3305 10 90	**- - -**	**Other**
3305 20 00	**-**	**Preparations for permanent waving or straightening**
3305 30 00	**-**	**Hair lacquers**
3305 90	**-**	**Other**
	- - -	**Hair oil**
3305 90 11	**- - - -**	**Perfumed**
3305 90 19	**- - - -**	**Other"**

5. Chapter 15 deals with "*Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes*". Tariff Item **15 13** reads as under:-

"1513		**Coconut (copra), palm kernel or babassu oil and fractions thereof, whether or not refined,**
	-	**but not chemically modified Coconut (copra) oil and its fractions**
1513 11 00	**- -**	**Crude oil**
1513 19 00	**- -**	**Other**
	-	**Palm kernel or babassu oil and fractions thereof**

6. A harmonious construction of the following would govern the field for

classification of the goods:-

- Rule 1 of the General Rules for the Interpretation of the First Schedule
- Chapter Note 1(e) to Chapter 15
- Section Note 2 to Section VI (after amendment w.e.f. 28.02.2005)
- Chapter Note 3 to Chapter 33 (after amendment w.e.f. 28.02.2005)

As discussed infra, cumulative construction of the above would lead to the conclusion that "*if the impugned goods are classifiable under Tariff Item* ***3305 90 19****, then the impugned goods are automatically excluded from classification under Tariff Item* ***1513 11 00*** *(or)* ***1513 19 00****".*

7. The Tariff itself has provided five rules for the interpretation. The *First Rule* of *the General Rules for the Interpretation of the First Schedule*, is generally referred to as the cardinal principle for classification. If the classification can be done from the Heading, Section or Chapter Notes, the rules of interpretation need not be resorted to. Interpretative rules are applicable only where the classification of a product cannot be determined in accordance with the Headings or relative Sections or Chapter Notes. **The First Schedule-Excise Tariff Rules for the interpretation of this Schedule**, reads as under:-

> "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.
> 2.(a) Any reference in a heading to goods shall be taken to include a reference to those goods incomplete or unfinished, provided that, the incomplete or unfinished goods have the essential character of the complete or finished goods. It shall also be taken to include a reference to those goods complete or finished (or falling to be classified as complete or finished by virtue of this rule), removed 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 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 provide 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.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in the 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.

....."

8. The First Rule has two components, namely:

i. The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only;

ii. 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 Chapter Notes do not otherwise require, according to the provisions thereinafter contained.

The classification of goods will be as per the point (ii) as per which, the classification demands the following conditions to be taken into consideration:-

i. Classification shall be done according to the terms of the Headings, **and**

ii. According to any relative Section or Chapter Notes, **and**

iii. Provided such Headings or Chapter Notes do not otherwise require according to the provisions contained thereon that is Rules 2 to 6

It is clear from the above that:- (i) the Heading and (ii) relative Section or Chapter Notes must be considered before classification is done. Only if after this exercise is done, a conflict in classification still persists, then the other rules for Interpretation may be resorted to (iii).

9. **CHANGES BROUGHT IN BY CENTRAL EXCISE TARIFF (AMENDMENT) ACT, 2004**:- Central Excise Tariff (Amendment) Act, 2004 which came into force with effect from 28.02.2005 brought in significant changes in Note 2 to Chapter 33 and introduction of Note 2 to Section VI inviting reclassification of the impugned goods. The Statement of Objects and Reasons of the Central Excise Tariff (Amendment) Act, 2004 reads as under:-

> (a) To accommodate more prominently the commodities which are of significance to the country's needs;
>
> (b) To adopt a common commodity classification for the purpose of levy and collection of duties of customs and central excise and for purpose of Import Trade Control Policy and collection of statistics;
>
> (c) To accommodate the demand from the trade and industry for adoption of a common commodity classification based on internationally adopted Harmonized Systems of Nomenclature to be used for trade-related transactions to facilitate International and domestic trade.
>
> (d) The salient feature of the Bill, *inter alia*, expands the six digit classification into eight digit classification and such expansion has been made in the First Schedule and the Second Schedule to the said Central Excise Tariff Act, to cover a wider range of specific commodities under enlarged tariff items so as to accommodate domestic concerns.

Tariff Item under eight digit system would be interpreted as under:-

> First two digits: refer to the Chapter Number of the Tariff (e.g. 33 ××××××)
>
> Next two digits: refer to heading of the goods in that Chapter (e.g. ×× 05 ××××)
>
> Next two digits: indicate Chapter sub-heading (e.g. ×××× 90 ××)
>
> Last two digits: refer to the chapter sub-sub-heading (e.g. ×××××× 10)

10. By the 2004 amendment, there has been realignment of certain goods including the impugned goods. For proper appreciation, we may usefully refer to comparative chart of relevant old legal provisions and the new legal provisions after amendment as under:-

Sl. No.		**Old Legal Provision**	**New Legal Provision**
1.	Section Note to Section VI	**Note 2:** Goods put up in sets consisting of two or more	**Note 2:-** Subject to Note 1 above, goods classifiable in

		separate constituents, some or all of which fall in this Section and are intended to be mixed together to obtain a product of Section VI or VII, are to be classified in the heading appropriate to that product, provided that the constituents are; (a) ..... (b) ..... (c)	heading **3004, 3005, 3006, 3212, 3303, 3304, 3305, 3306, 3307, 3506, 3707 or 3808** by reason of being put up in measured doses or for retail sale are to be classified in those headings and in no other heading of this Schedule.
2.	Chapter Note to Chapter 33	**Note 2**: Heading Nos.33.03 to 33.07 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings with **labels, literature or other indications that they are for use as cosmetics** or toilet preparations or put up in a form clearly specialized to such use and includes products whether or not they contain subsidiary pharmaceutical or antiseptic constituents, or are held out as having subsidiary curative or prophylactic value.	**Note 3**: Headings 3303 to 3307 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use.
3.	Heading description	**33.05** Preparations for use on the hair	**3305** Preparations for use on the hair
4.	Sub heading description	**3305.10** - Perfumed hair oils - Other:	**3305 90 11** - - - - Perfumed **3305 90 19** - - - - Other

11. By a cumulative reading of the old provisions and the new legal provisions, it can be seen that following significant changes have been brought about in the Central Excise Tariff with effect from 28.02.2005:-

(i) Modification of the then Note 2 to Chapter 33 (presently renumbered as 3) by way of deletion to the extent that ..... goods put up in packings with labels, literature or other indications that they are for use as.....;

(ii) After amendment, incorporation of the expressions in Note 3 to Chapter 33 the expressions "*suitable for use as goods of those headings*" and "*put up in packings of a kind sold by retail for such use*"; and

(iii) Introduction of Section Note 2 to Section VI - if the goods classifiable under Heading **3305,** it cannot be classified in any other heading of

the Schedule.

12. **Relevant Chapter Notes and Section Notes for classification of the impugned goods:-** Let us now examine the relevant Headings, Sections and Chapter Notes pertaining to the classification of the impugned goods. Chapter Note 3 to Chapter 33 (amended w.e.f. 28.02.2005), reads as under:-

> "**Headings 3303 to 3307 apply**, inter alia**, to products, whether or not mixed** (other than aqueous distillates and aqueous solutions of essential oils), **suitable for use as goods** of these headings **and put up in packings of a kind sold by retail for such use**"

13. Chapter Note 3 to Chapter 33 envisages four key things, namely:

a. The product may or may not be mixed;

b. The product should be suitable for use as a good under these headings (**33 03** to **33 07**);

c. The product should be put up in packings of a kind sold by retail for such use;

d. Headings **33 03** to **33 07** may also apply for other goods not being covered by this Chapter Note (as indicated by the phrase 'inter alia")

14. It is important to note that *the Chapter Note is not phrased in an exclusive manner*. It merely reiterates the conditions which are required to be satisfied for a certain product to merit classification under Heading Tariff Items **33 03** to **33 07**. The expression, '*suitable for use as goods of these headings*' and '*put up in packings of a kind sold by retail for such use'* as used in Note 3 of Chapter 33 indicate that oils suitable for use as Hair Oil are classifiable under Heading ...**33 05**... even if they are not so used. What matters, is the '*suitability for such use' and* '**packings of a kind sold by retail for such use'**. In view of the amended position, if the conditions as specified in Note 3 to Chapter 33 for classification as '*Hair Oil, Other*' are

satisfied, then the product has to be classified only under Heading ...**33 05**... and no other classification is permissible. The above is further made clear by amended Section Note 2 to Section VI.

15. Section Note 2 to Section VI (after amendment w.e.f. 28.02.2005) reads as under:-

> "Subject to Note 1 above, goods classifiable in heading 3004, 3005, 3006, 3212, 3303, 3304, 3305, 3306, 3307, 3506, 3707 or 3808 by reason of being *put up in measured doses* or *for retail sale* **are to be classified in those headings and in no other heading of this schedule**."

Section Note 2 to Section VI of the first schedule is exclusionary in nature, wherein it is *inter alia* stated that if a good is classifiable under Heading ...**33 05**... it cannot be classified in any other Heading of the Schedule. As per the provisions of Note 2 to Section VI, if the conditions as specified in Chapter Note 3 for classification as 'Hair Oil' under Heading ...**33 05...** are satisfied, then the product has to be classified only under Heading ...**33 05...** and no other classification is permissible. If the conditions as specified under Chapter Note 3 of Chapter 33 for classification of impugned goods as 'Hair Oil' under Heading ...**33 05**... are satisfied then the product is classifiable as goods only under Chapter 33 and by virtue of Section Note 2 to Section VI no other classification is permissible.

16. Because of the "*suitability for use as hair oil*" and being '*put up in packings of the kind sold by retail for such use*', by virtue of Section Note 2 to Section VI, their classification under Chapter 15 as 'fixed vegetables oils' or 'coconut oil' as claimed does not arise in view of the primacy given to

Tariff sub-heading ...**33 05**... by Note 2 to Section VI. Further Note 1 (e) to Chapter 15 provides that "*the chapter does not cover goods of Section VI*". Note 1(e) to Chapter 15 reads as under:-

> "Animal or Vegetable fats and Oils and their cleavage products; prepared edible fats; Animal or Vegetable Waxes
>
> Notes:
>
> 1. This Chapter does not cover:-
>
> .....
>
> (e) fatty acids, prepared waxes, medicaments, paints, varnishes, soap, perfumery, cosmetic or toilet preparations, sulphonated oils or other goods of Section VI; or
>
> ....."

Note 1(e) to Chapter 15 clearly excludes goods covered under Section VI in which Chapter 33 Tariff Item **33 05** is one of the items.

17. **Whether Coconut Oil falls under Chapter 15 and applicability of Interpretative Rule 3:-** Contention of the assessee is that the description of 'Coconut Oil' under Chapter 15 is specific and hence applicable to the subject goods in terms of Rule 3(a) of the Interpretative Rules. It is well-settled that Rule 3(a) of "*General Rules for the Interpretation*" is invokable only if the Headings and the relevant Sections and the Chapter Notes are not clearly determinative of the classification. Claim of the assessee is that the description 'Coconut Oil' under Chapter 15 is specific and hence, applicable to their goods in terms of Rule 3(a) of the Interpretative Rules, though appears attractive, the same does not merit acceptance. This is because the classification of the impugned goods is based on the terms of Headings, relative Chapter Notes and Section Notes which are paramount in this regard under the primary and main Rule 1 of the Interpretative Rules.

18. **M/s. Moreshwar and other job workers:**- In the light of the above amended provisions and the interpretation thereon, let me consider whether the impugned goods are classifiable under the Heading **33 05** or under Chapter **15** Item **15 13**. For convenience, firstly, I refer to the facts in C.A. Nos.6703-10 of 2009. Assessees/respondents in these appeals *viz*., (i) Aishwarya Industries; (ii) Moreshwar Industries; (iii) Shivam Enterprises; (iv) Sowparnika Enterprises are four job workers and M/s. Marico Ltd. who is the registered owner of the brand 'Parachute' for 'Hair Oil'. M/s. Moreshwar Industries and three other job workers had entered into a contract with M/s. Marico Ltd. for the manufacture of HDPE bottles (High Density Polyethylene), screen printing with the brand name and logo 'Parachute' of Marico Ltd. and packing the bottles with coconut oil to be sold in the market under the brand 'Parachute'. From the materials on record, the process undertaken by M/s. Moreshwar and others on the job work from M/s. Marico is summarized as:- (a) M/s. Moreshwar and other job workers receive coconut oil in tankers from M/s. Marico, Pondicherry; the said oil is unloaded and stored in storage tanks at M/s. Moreshwar and other respondents/job workers; (b) Then, after mechanical filtering and stored in another tanker, the same is packed into 50 ml, 100 ml, 200 ml and 500 ml 'containers' and 'flip tops'; (c) these retail packs are then supplied to M/s. Marico depot as per their dispatch schedule for being sold under the brand name 'Parachute'; and (d) the description given on the packings is '*100% pure coconut oil*' with the '*Parachute*' mark. As the

process carried out by M/s. Moreshwar and other job workers is that after mechanical filtering packing of goods from bulk to retail pack of a kind (containers so far manufactured by them) and delivered to M/s. Marico to be sold under the brand name 'Parachute', the activities of M/s. Moreshwar and other job workers amount to manufacture in terms of Section 2 (f)(iii) of Central Excise Act, 1944. According to Revenue, once this fact of manufacture of oil '*suitable for use as 'Hair Oil*" is established, classification under Chapter Heading **15** is ruled out and the appropriate Heading is **33 05** by virtue of Chapter Note 3 to Chapter 33 and Note 2 to Section VI.

19. **M/s. Madhan Agro Industries (P) Ltd. (MAIPL)**:- So far as the 'MAIPL', coconut (copra) is crushed and grounded and the oil-cake and oil are separated and then the oil is filtered and purified. The filtered oil is then stored in tanks and packed in pouches and bottles of different measurements *viz*., 5 ml, 50 ml, 100 ml, 200 ml, 500 ml, and 1000 ml pouches, 50 ml, 100 ml, 200 ml and 500 ml plastic bottles, 100 ml, 200 ml, and 500 ml wide mouthed bottles, 200 ml tins, one litre and 2 litre cans and sold in the market. According to Revenue, MAIPL, tests the products of their competitor's such as *'Parachute Hair Oil'* and compare the results of their products to ensure the marketability of their product. Case of Revenue is that plastic bottles have the provision for making a small hole on the top and when the bottle is tilted and pressed lightly, only a small quantity of oil comes out, which can be applied on the hair and those coconut oil manufactured by M/s. MAIPL is suitable for use as 'Hair Oil'.

The very nature of packing shows that the product is meant to facilitate such use as 'Hair Oil' and the same is classifiable under Chapter 33. It is alleged that with an intention to evade payment of duty, M/s. MAIPL have mis-declared the excisable coconut oil (un-perfumed Hair Oil) as *'edible grade/oil'* filtered 100% pure coconut oil.

20. **Findings of the Tribunal**:- The tribunal set aside the order of the Commissioner by holding that Chapter 15 covers all varieties of coconut oil, edible as well as non-edible and it is not essential that the edible coconut oil should be marketed in packaging approved by PFA Rules for classifying it under Chapter 15 and that the earlier decision of the Tribunal (prior to amendment) applies to the corresponding entries even after amendment. In the case of MAIPL, after referring to earlier decisions of the Tribunal, CESTAT held as under:-

> "...The packing of coconut oil in that case was not of the type referred to, above or which could be solely and exclusively said to be meant for application on hair only. As such the Tribunal held that Chapter 2 to Chapter 33 was not applicable for classifying the goods in that case under Chapter 33. HSN Explanatory Notes to Chapter 33 were same before and after 28.02.05. Moreover entries under Chapter 15 relating to coconut oil in the HSN and Central Excise Tariff after 28.02.2005 are also identical. Therefore, the decision of the Tribunal in the above case interpreting the scope of Chapter 15.13 and 33.05 of Central Excise Tariff applies to the corresponding entries even after 28.02.2005. The above ratio of the decision of the Tribunal therefore squarely applies to the present case also...."

21. **Contention of the Revenue**:- Learned Senior Counsel Mr. A.K. Panda submitted that the tribunal failed to consider that by virtue of amendment to Central Excise Tariff Act, 1985 with effect from 28.02.2005, 'Hair Oil' other than perfumed ones merit classification under tariff item No.**3305.90.19**. It

was submitted that consequent to the amendment, that so long as the product is *'suitable for use as goods of the heading'* and *"put up in packing for retail sale for such use",* whether mixed or not, is classifiable under Chapter Heading **33 05** and in the light of Section Note 2 to Section VI, it cannot be classified under any other Heading in this Schedule. It was further submitted that CESTAT relied upon various orders for referring to Chapter Note 2 to Chapter 33 which were though prior to amendment thereby failing to consider that the Show Cause Notice and the Order-in-Original were passed pursuant to the amended Chapter Note 2 to Chapter Note 33 and Section Note with effect from 01.03.2005. Insofar as 'Parachute' is concerned, Revenue places reliance upon various materials like Trade Mark Registration and other materials as to depicting how the market has understood, 'Parachute' as the 'Hair Oil'. It was further submitted that in case of conflict, the Notes contained in the Tariff Schedule to the CESTAT will prevail over that of the HSN and the impugned order cannot be sustained.

22. **Contention of the respondent(s)/Assessee(s)**: Contention of the respondents/assessees is that 100% pure 'Coconut Oil' cover all varieties of coconut (Copra oil) marked as 'edible oil' and manufactured under Prevention of Food Adulteration (PFA) licence the same cannot be classified "*preparation for use on hair*" to be classified as 'Hair Oil' under Chapter **33** Tariff Item **33 05** merely because of the small size of the packings. Learned Senior Counsel Mr. Bagaria submitted that under the

statutory provision of the Edible Oils Packaging (Regulation) Order, 1988 read with Sl. No.10 of Schedule III of the Standards of Weights & Measures (Packaged Commodities) Rules, 1977, edible oil shall be packed in the specified sizes of 50 ml, 100 ml, 200 ml, 500 ml, 1 litre or 2 litres which are fully in accordance with the mandatory requirement of the aforesaid statutory provisions. It is, therefore, submitted that by packing the said 'edible Oil' as per the sizes as required under the law, 'edible oil' does not cease to become 'edible oil' and become classifiable as 'Hair Oil' so as to attract classification under 33.05. Reliance was placed upon the judgment of Rajasthan High Court in ***Assistant Commissioner v. Marico Industries Ltd.*** 2006 SCC online Raj 446 to contend that the small packings being done for convenience of consumers to cater to different sections of consumers at the different economic levels, it would not make the 'edible coconut oil' to be "Hair Oil" classifiable under Chapter 33. Reliance was also placed upon the judgment of Allahabad High Court in ***Marico Limited v. Commissioner, Commercial Taxes,*** UP (2015) 78 VST 423.

23. **Whether the Tribunal was right in classifying the impugned goods under Chapter 15**:- The Tribunal held that Chapter 15 covers all varieties of coconut oil, edible as well as non-edible. Chapter 15 of Section III of the Schedule to CETA, 1985 covers "*animal or vegetable fats and oils*". Heading 1513 reads as under:-

"1513		**Coconut (copra), palm kernel or babassu oil and fractions thereof, whether or not refined, but not chemically modified**
	-	**Coconut (copra) oil and its fractions**
1513 11 00	**- -**	**Crude oil**

1513 19 00 - - Other

'Coconut Oil' manufactured and cleared by M/s. Moreshwar and other job workers and MAIPL can be classified either as 'Hair Oil' under sub-heading 3305 or as 'Vegetable Oil' under sub-heading 1513. However, when 'Coconut Oil' is put up in packing of a kind sold in retail suitable for use as application on hair would merit classification under tariff entry 33.05. This is the object of the legislature in bringing about the amendment to Chapter Note 3 of Chapter 33 and Section Note 2 to Section VI. Chapter Note 1(e) to Chapter 15 provides that *".....said Chapter does not cover goods of Section VI*". This exclusion is in clear conformity and recognition of the fact that goods which otherwise would fall under Section VI are classifiable in accordance with the conditions of Chapter Notes contained in Chapter 33 (use of goods, nature of packing, form etc.) and under no other Heading of the Schedule. By holding that Chapter 15 covers all varieties of coconut oil, edible as well as non-edible, the Tribunal erred in not keeping in view that the object of the legislature in bringing about the amendment.

24. As discussed earlier, the process carried on by M/s. Moreshwar and other job workers are:- (i) oil received from M/s. Marico is unloaded and stored in storage tanks in the unit and it undergoes the process of mechanical filtering and stored in another tank, then sent through pipeline for filling in the small containers by the filling machines; (ii) oil obtained by leakage, waste, overflow etc. are collected and fed into the salvage oil tank and the same is recycled and blended with 9 MT coconut oil in tanker for

two hours or 16 MT coconut oil tanker for three hours; (iii) for manufacture of HDPE containers, HDPE granules and master batch in the required ratio is mixed and fed into the mould and blue colour container is obtained; the fit container is sent to heating and then screen-printing with blue, green and white colour printing ink for printing the trademark and logo and other details as required by M/s Marico Ltd.; (iv) waste grind materials and 8% of pellets are mixed with virgin granules for manufacture of containers; and (v) the containers are then wrapped with thin plastic and packed in cardboard boxes and dispatched to the depot of M/s. Marico Ltd.

25. Order-in-Original by the Commissioner recorded findings of fact that HDPE containers manufactured by M/s. Moreshwar and other job workers that coconut oil stored in the tanks at M/s. Moreshwar after mechanical filtering is packed in 50 ml, 100 ml, 200 ml, 1 ltr., 2 ltr containers for retail use and these retail packs are supplied to M/s. Marico Depot as per the dispatch schedule. The description given on the packings is 100% pure coconut oil with 'Parachute' mark. So far as the first component "*the product may or may not be mixed*", as discussed earlier, the impugned goods "*coconut oil*" is pure oil and is not a mixed product and thus, the first condition is satisfied. So far as the second condition, "*the product should be suitable for use as a good under these headings (**33 03** to **33 07**)*" is also satisfied. Thus, the first and second components of Note 3 to Chapter Note 33 "*the product may or may not be mixed*" and "*the product should be suitable for use as a good under these Headings (33 05)*" are satisfied.

26. As discussed infra by applying the *'Common Parlance Test',* pure coconut oil packed in small containers is understood by the dealer and the consumer and in the market as *'Hair Oil'.* The expression "*suitable for use as goods in these headings*" as used in the Chapter Note 3 to Chapter 33 indicates that oils suitable for use as 'Hair Oil' or classifiable under Heading **33 05** even if they are not so used. As per Note 3 to Chapter 33, what matters is suitability for such use, if the answer to which is 'Yes', then the goods are classifiable under Chapter 33. So far as the next component, "*the product should be put up in packings of a kind sold by retail facilitating such use*", is satisfied then they are classified under Chapter 33. As pointed out in the Order-in-Original and also as discussed earlier in the case of MAIPL and also M/s. Moreshwar and other job workers, the product is packed in small quantities in containers like 50 ml, 100 ml, 200 ml, 500 ml which also contain the brand trademark 'Parachute'.

27. So far as respondent-MAIPL is concerned, coconut is crushed and pure coconut oil is packed in 5 ml, 50 ml, 100 ml, 200 ml, 500 ml and one litre pouches and also containers in 50 ml, 100 ml, 200 ml, 500 ml and one litre cans and sold under the brand name 'Shanthi'. Here again, these pouches/containers in such small packings by construing them in the sense as to how in the trade, dealers and consumers understood it. The Commissioner was right in holding that they were 'Hair Oil' suitable for use on hair.

28. Insofar as 'Parachute' is concerned, the Revenue relies upon

various materials as to how consumers and others engaged in the trade understood "*Parachute"* for *'Nature Care for Hair'* including the registration of Trademark No.1033842 Class-3-Parachute associated with Hair Oil. Contention of Revenue is that the market identity of the subject goods-coconut oil is '*Hair Oil*' and not as '*Edible Grade Oil*'. The Revenue has also referred to the website of 'Parachute' (*vide* Order-in-Original No.06/2008-(C) dated 28.02.2008) where 'Parachute' is described as 'Hair Oil' and the same reads as under:-

> "Nature Care Division (55% of turnover): Parachute was the first branded coconut oil in the Indian market and has become a generic name for coconut oil used for hair application. It currently has a 52% market share in the branded coconut oil market. About 50% of Marico's turnover is contributed by the Parachute brand alone. To build upon and strengthen the strong association between coconut and Parachute brand, Marico has set up a Research Centre to develop new coconut based products. Over the years, the company has launched several brand extensions such as 'Parachute Jasmine', 'Parachute Dandruff Solution', etc....."

29. An argument was advanced by the respondent/assessee that the packings/containers do not contain any label/indication to the effect that the subject goods are used on the hair. The contention that the packings contain description as 'Edible Oil' and that there was no indication on the packing that it is 'Hair Oil' is of no significance. After the amendment, there is no necessity that the packings/containers should bear label to the effect that the goods are used on the hair. As per Note 3 to Chapter 33, any product "*suitable for use as goods in these headings and that put up in packings of a kind sold by retail for such use*", has to be classified as 'Hair Oil' under Chapter 33. So long as the product is suitable for use as 'Hair Oil' and if it is packed in such a way that it is useable for the purposes of

'Hair Oil', it has to be classified as 'Hair Oil' under Chapter 33.

30. Government of India, Trade Mark Registry and Public search result indicate that Trademark No.1033842 Class-3-Parachute is associated with Hair Oil, Hair lotions etc. Registration of the trademark of the 'Parachute' brand is for selling items like hair oil, hair lotion, hair growing preparation, hair tonics etc. The Tribunal held that the aspect of label identified with the hair oil does not advance the case of Revenue for classification of 'Coconut Oil' as 'Hair Oil' since the allegation that job workers used green colour labels for marketing hair oil was absent in the Show Cause Notice. Relevant portion of the order of the Tribunal is as under:-

> "7. .....Moreover, the material allegation of Marico that its job workers used green coloured labels for marketing hair oil exclusively was absent in the show-cause notice. Marico had never marketed any product under the orange label and all along marketed its entire range of products using the green label only. We find that in the absence of any label which could be identified with a hair oil, this aspect of the label does not advance the Revenue's case for classification of the coconut oil as hair oil. Use of a trademark or a label has no bearing on classification."

The Tribunal is not right in saying that the Show Cause Notice issued to the respondent-M/s. Moreshwar and other job workers was absent on using green coloured labels for marketing hair oil exclusively. Para (3.4.2) of the Show Cause Notice refers to Screen-printing as under:-

> ".....HDPE granules and master batch in the required ratio is mixed and fed into the mould and blue colour container is obtained. Runners and raisers are removed and the container is examined and if it is not fit, the same is sent for grinding. The fit container is sent to heating and then screen-printing with blue, green and white colour printing ink for printing the trademark and logo and other details as required by Marico Ltd....."[**Underlining added**]

That apart para (3.4.5)(4.1) of the Show Cause Notice contains scanned

copy of the application for registration of the trademark in respect of hair oil. Contents of Show Cause Notice, there are clear averments as to the colour, printing of green 'label' and also the trademark. Hence, the Tribunal is not right in saying that the Show Cause Notice is absent as regards use of green coloured labels for marketing hair oil and that registration of trademark for hair oil on the containers is of no significance for classifying the product as hair oil under Chapter 33.

31. **Whether classification of 'Coconut Oil' falls under Chapter 15 and applicability of Interpretative Rule 3 is acceptable:-** After amendment Heading **15 13** reads as under:-

1513		**Coconut (copra), palm kernel or babassu oil and fractions thereof, whether or not refined, but not chemically modified**
	-	**Coconut (copra) oil and its fractions**
1513 11 00	**- -**	**Crude oil**
1513 19 00	**- -**	**Other**
	-	**Palm kernel or babassu oil and fractions thereof**

32. Contention of the assessee is that the description of *'Coconut Oil'* under Chapter 15 is specific and hence applicable to the subject goods in terms of Rule 3(a) of the Interpretative Rules. It is well-settled that Rule 3(a) of "*General Rules for the Interpretation*" is invokable only if the Headings and the relevant Sections and the Chapter Notes are not clearly determinative of the classification. The contention that the description "*coconut oil (copra)*" under Chapter 15 is specific and hence, applicable to the impugned goods does not merit acceptance since the classification of

the goods is determinate on the harmonious construction of headings, relative Chapter Notes and Section Notes and the main Rule 1 of the Interpretative Rules. Classification of the impugned goods is primarily based on the Headings, relative Chapter Notes and Section Notes which are paramount in this regard as per Rule 1 of the Interpretative Rules.

33. Rule 3 provides for classification in case goods are classifiable under two or more headings. For proper appreciation, at the risk of repetition, it is necessary to refer to Rule 3 of the Interpretative Rules which reads as under:-

> 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 provide 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.
> (c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in the numerical order among those which equally merit consideration.

Rule 3(b) provides the manner of classification of mixtures, composite goods consisting of different materials or made up of different components and goods put up in sets for retail sale. As 'Coconut Oil' is not mixed or composite goods, Rule 3(b) does not have application. Rule 3(a) states that the most specific description will be preferred over the more general one. In the present case, when item description is read with the Chapter

Notes, Section Notes and the tests for classification that is Tariff Item 1513.19.00 and 3305.90.19 are equally specific. Hence, as per Rule 3(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 classification. Hence, the coconut oil manufactured by the respondents could rightly be classified under heading 3305.90.19, as it occurs last in the numerical order of the tariff.

34. In ***Union of India and Ors. v. Pesticides Manufacturing and Formulators Association of India,*** (2002) 8 SCC 410, this Court has held that if there are two specific headings to which a product can be referred, the one occurring subsequently would prevail.

35. The Tribunal set aside the demand on the ground that the "*coconut oil"* would merit classification under Chapter Heading 15.03 of CETA, 1985 attracting 'NIL' rate of excise duty and not under Chapter Heading 33.05 of the CETA attracting duty of 16% *advalorem*. The Tribunal erred in not appreciating that with effect from 01.03.2005, the Central Excise Tariff Act, 1985 has undergone an amendment as per which (Note 3 to Chapter 33) Heading nos.3303 to 3307 would apply, *inter alia*, to products whether or not mixed suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use. The case laws which were reported in ***Kothari Products Ltd. v. CCE*** 2002 (139) ELT 633 (T); ***Srikant Sachets Pvt. Ltd. v. CCE*** 2005 (180) ELT 401 (T); and ***Commissioner of Central Excise v. Essen Products (I) Ltd.*** 2006 (200) ELT 342 (T) etc. relied

upon by the Tribunal and the Board circular dated 31.08.1995 were dealing with the cases pertaining to the period prior to 01.03.2005. The Tribunal was not right in relying upon the earlier orders/circular dated 31.08.1995 prior to amendment to base its conclusion that coconut oil both edible and non-edible merits classification under Chapter 15.

36. **Tests for Classification**: The Supreme Court has consistently taken the view that, in determining the meaning or connotation of words and expressions describing an article in a tariff schedule, one principle which is fairly well-settled is that those words and expressions should be construed in the sense in which they are understood in the trade, by the dealer and the consumer. Whether a particular article will fall within a particular tariff heading or not, has to be decided on the basis of as to how that article is understood in '*common parlance*' or in '*commercial world*' and not as per scientific or technical meaning. In the case of ***Asian Paints India Ltd. v. Collector of Central Excise*** (1988) 2 SCC 470, it has been held that when definition of a word has not been given, it must be considered in its popular sense and not according to scientific or technical sense.

37. After referring to various judgments, in ***Plasmac Machine Manufacturing Co. (P) Ltd. v. Collector of Central Excise, Bombay*** 1991 Supp (1) SCC 57, it was held by this Court as under:-

> "**15.** ..... It is an accepted principle of classification that the goods should be classified according to their popular meaning or as they are understood in their commercial sense and not as per the scientific or technical meaning. *Indo International Industries* v. *CST* ((1981) 2 SCC 528 and *Dunlop India Ltd.* v. *Union of India* (1976) 2 SCC 241 have settled this proposition. How is the product identified by the class or section of people dealing with or using the

> product is also a test when the statute itself does not contain any definition and commercial parlance would assume importance when the goods are marketable as was held in *Atul Glass Industries (Pvt.) Ltd.* v. *CCE* (1986) 3 SCC 480 and *Indian Aluminium Cables Ltd.* v. *Union of India* (1985) 3 SCC 284. In *Asian Paints India Ltd.* v. *CCE* (1988) 2 SCC 470 which was a case of emulsion paint, at para 8 it was said: (SCC p. 473, para 8)
>
> > "It is well settled that the commercial meaning has to be given to the expressions in tariff items. Where definition of a word has not been given, it must be construed in its popular sense. Popular sense means that sense which people conversant with the subject matter with which the statute is dealing, would attribute to it.""

38. In ***Dabur Industries Ltd. v. Commissioner of Central Excise, Jamshedpur*** (2005) 4 SCC 9, it was held that in classifying a product, the scientific or technical meaning is not to be resorted to but the test was to see what the persons using the product understand it to be.

39. In ***Commissioner of Central Excise v. Wockhardt Life Sciences Limited*** (2012) 5 SCC 585, this Court emphasized "*Common Parlance Test*" or the "*Commercial Usage Test"* in paras (33) to (37) and held as under:-

> "**33.** There is no fixed test for classification of a taxable commodity. This is probably the reason why the "common parlance test" or the "commercial usage test" are the most common (see *A. Nagaraju Bros.* v. *State of A.P.* 1994 Supp (3) SCC 122). Whether a particular article will fall within a particular tariff heading or not has to be decided on the basis of the tangible material or evidence to determine how such an article is understood in "common parlance" or in "commercial world" or in "trade circle" or in its popular sense meaning. It is they who are concerned with it and it is the sense in which they understand it that constitutes the definitive index of the legislative intention, when the statute was enacted (see *Delhi Cloth and General Mills Co. Ltd.* v. *State of Rajasthan* (1980) 4 SCC 71).
>
> **34.** One of the essential factors for determining whether a product falls within Chapter 30 or not is whether the product is understood as a pharmaceutical product in common parlance [see *CCE* v. *Shree Baidyanath Ayurved Bhavan Ltd.* (2009) 12 SCC 419 and *CCE* v. *Ishaan Research Lab (P) Ltd.* (2008) 13 SCC 349]. Further, the quantity of medicament used in a particular product will also not be a relevant factor for, normally, the extent of use of medicinal ingredients is very low because a larger use may be harmful for the human body. [*Puma Ayurvedic Herbal (P) Ltd.* v. *CCE (2006) 3 SCC 266*, *State of Goa* v. *Colfax Laboratories Ltd. (2004) 9 SCC 83* and *B.P.L. Pharmaceuticals Ltd.* v. *CCE 1995 Supp (3) SCC 1*.]

> **35.** However, there cannot be a static parameter for the correct classification of a commodity. This Court in *Indian Aluminium Cables Ltd.* v. *Union of India* (1985) 3 SCC 284 has culled out this principle in the following words: (SCC p. 291, para 13)
>
> > "*13*. To sum up the true position, the process of manufacture of a product and the end use to which it is put, cannot necessarily be determinative of the classification of that product under a fiscal schedule like the Central Excise Tariff. What is more important is whether the broad description of the article fits in with the expression used in the Tariff."
>
> **36.** Moreover, the functional utility and predominant or primary usage of the commodity which is being classified must be taken into account, apart from the understanding in common parlance. [See *O.K. Play (India) Ltd.* v. *CCE (2005) 2 SCC 460*, *Alpine Industries* v. *CCE (2003) 3 SCC 111*, *Sujanil Chemo Industries* v. *CCE & Customs (2005) 4 SCC 189*, *ICPA Health Products (P) Ltd.* v. *CCE (2004) 4 SCC 481*, *Puma Ayurvedic Herbal (2006) 3 SCC 266*, *Ishaan Research Lab (P) Ltd. (2008) 13 SCC 349* and *CCE* v. *Uni Products India Ltd. (2009) 9 SCC 295*]
>
> **37.** A commodity cannot be classified in a residuary entry, in the presence of a specific entry, even if such specific entry requires the product to be understood in the technical sense (see *Akbar Badrudin Giwani* v. *Collector of Customs (1990) 2 SCC 203* and *Commr. of Customs* v. *G.C. Jain (2011) 12 SCC 713*). A residuary entry can be taken refuge of only in the absence of a specific entry; that is to say, the latter will always prevail over the former [see *CCE* v. *Jayant Oil Mills (P) Ltd. (1989) 3 SCC 343*, *HPL Chemicals Ltd.* v. *CCE (2006) 5 SCC 208*, *Western India Plywoods Ltd.* v. *Collector of Customs (2005) 12 SCC 731* and *CCE* v. *Carrier Aircon Ltd. (2006) 5 SCC 596*].

40. In ***Commissioner of Central Excise, Delhi v. Carrier Aircon Ltd.*** (2006) 5 SCC 596, this Court held as under:-

> "**14.** End use to which the product is put to by itself cannot be determinative of the classification of the product. See *Indian Aluminium Cables Ltd.* v. *Union of India* (1985) 3 SCC 284. There are a number of factors which have to be taken into consideration for determining the classification of a product. For the purposes of classification the relevant factors *inter alia* are statutory fiscal entry, the basic character, function and use of the goods. When a commodity falls within a tariff entry by virtue of the purpose for which it is put to (produced), the end use to which the product is put to, cannot determine the classification of that product."

41. Chapter 15 of Section 3 of Central Excise Tariff deals with "*Animal or Vegetable fats and Oils and their cleavage products; prepared edible fats; Animal or Vegetable Waxes".* Sub-Heading **1513** deals with coconut (copra). Before considering the contentious issues as to the classification

of the impugned goods, it is necessary to point out as to how 'Coconut Oil' is understood and treated in the market.

42. In ***Jain Exports Pvt. Ltd. v. Union of India*** 1987 (29) ELT 753 Del, the High Court of Delhi dealt with the use of 'Coconut Oil' and in the context of importability of 'Coconut Oil', held as under:-

> "**25**. ....it is well known that the coconut oil is not at all used as an edible oil in a very large part of our country. Almost all the parts of India up to Vindhyas do not use coconut oil as edible medium. Even in rest of the country though it is in use extensively in some very small part, its use in most of the other part is small average. So ordinarily if a person was to go to the market and ask for coconut oil, the normal question he would be asked will be whether he needs it as hair oil or shampoo. No one normally will understand coconut oil to mean only edible variety because such is not the normal major use. A person would have to specifically clarify that by asking for coconut oil he is asking for edible variety in order to make his intention clear. Thus by itself and in ordinary parlance coconut oil in the import policy would be understood to include both edible variety and industrial variety of coconut oil. If only one variety of coconut oil was meant to be covered, it would be more consistent to hold that it is industrial variety considering the overwhelming use of coconut oil for non-edible purpose. But an entry would never be restricted only to edible variety of coconut oil.....". [**Underlining added**]

Though the above observation is in the context of importability of 'Coconut Oil', the factum of overwhelming use of 'Coconut Oil' and as to coconut oil is normally understood as 'Hair Oil' cannot be ignored. It is a matter of common knowledge that in many parts of the country 'Coconut Oil' is widely used as 'Hair Oil' and not generally used as edible oil; it is so used as edible oil only in few areas of the country. No one will normally understand 'Coconut Oil' to mean only as edible oil because such is not the major use of 'edible oil'. The moment we held that the impugned goods-coconut oil is suitable for use as 'Hair Oil' as discussed infra, it has to be classified only under Chapter 33.

43. As pointed out earlier, Revenue relies upon number of materials that

those in trade, traders and consumers have understood 'Parachute' as 'Hair Oil'. In para (36) of ***Wockhardt Life Sciences Ltd.*** quoted above, this Court laid emphasis to the "*functional utility and predominant or primary usage of the commodity"* that is to be taken into account while classifying the product. As discussed earlier, after amendment what is more relevant is the suitability of the goods for being used as '*Hair Oil*' and the usage of the product in common parlance.

44. In the Order-in-Original No.06/2008-(C), reference is also referred to feedback about the product by their consumers and their impressions and experiences. It also refers to the interview of Mr. Arvind Mediratta, Head of Marketing Division of M/s. Marico Limited stating that 'Parachute' brand is associated with 'Hair Oil' whereas Saffola brand is associated with edible (cooking) oil. The revenue also refers to an article in the Financial Express dated 14.06.2001 where Mr. Srikand Gupta, Chief Executive Officer (CEO), Nature Care Division of M/s. Marico stated that they wanted the 'Parachute' brand to be perceived as a cosmetic brand with the utility of nourishing hair.

45. The appellant has relied upon the following write up on coconut oil by the Coconut Development Board (a statutory body under the Ministry of Agriculture):-

> "Coconut oil is used in the country as a cooking fat, hair oil, body oil and industrial oil..... Coconut oil is marketed in bulk as well as in packs ranging from sachets containing 5 ml to 15 kg tins. The branded coconut oil in small packs is mainly marketed as hair oil and body oil."

46. A taxing statute is being one levying a tax on goods must, in the absence of a technical term or a term of science or art, be presumed to

have used an ordinary term as coal according to the meaning ascribed to it in common parlance. In ***Commissioner of Sales Tax, Madhya Pradesh, Indore v. Jaswant Singh Charan Singh,*** AIR 1967 SC 1454, it was held as under:-

> **"5.** The result emerging from these decisions is that while construing the word "coal" in Entry I of Part III of Schedule II, the test that would be applied is what would be the meaning which persons dealing with coal and consumers purchasing it as fuel would give to that word. A sales tax statute is being one levying a tax on goods must in the absence of a technical term or a term of science or art, be presumed to have used an ordinary term as coal according to the meaning ascribed to it in common parlance. Viewed from that angle both a merchant dealing in coal and a consumer wanting to purchase it would regard coal not in its geological sense but in the sense as ordinarily understood and would include "charcoal" in the term "coal". It is only when the question of the kind or variety of coal would arise that a distinction would be made between coal and charcoal; otherwise, both of them would in ordinary parlance as also in their commercial sense be spoken as coal."

47. After referring to various judgments on the point of common parlance test, in ***Commissioner of Central Excise, New Delhi v. Connaught Plaza Restaurant Private Ltd., New Delhi*** (2012) 13 SCC 639, it was held as under:-

> **"33.** Therefore, what flows from a reading of the aforementioned decisions is that in the absence of a statutory definition in precise terms; words, entries and items in taxing statutes must be construed in terms of their commercial or trade understanding, or according to their popular meaning. In other words they have to be constructed in the sense that the people conversant with the subject-matter of the statute, would attribute to it. Resort to rigid interpretation in terms of scientific and technical meanings should be avoided in such circumstances. This, however, is by no means an absolute rule. When the legislature has expressed a contrary intention, such as by providing a statutory definition of the particular entry, word or item in specific, scientific or technical terms, then, interpretation ought to be in accordance with the scientific and technical meaning and not according to common parlance understanding."

48. In the case of ***Alpine Industries v. Collector of Central Excise, New Delhi*** (2003) 3 SCC 111, the question was whether "Lip Salve" could be

classifiable as a preparation for care of skin or as a medicament. The product was mainly supplied to the Defence Department for use by military personnel who are posted in high-altitude areas. In ***Commissioner of Central Excise, Calcutta v. Sharma Chemical Works*** (2003) 5 SCC 60, this Court held that in interpreting provisions of a statute like the Excise Act, the popular meaning as understood by the users should be applied and not the scientific or technical meaning.

49. As held in ***Jain Exports Pvt. Ltd***., the factum of overwhelming use of 'Coconut Oil' as 'Hair Oil' in most parts of the country cannot be ignored. No one will normally understand 'Coconut Oil' to mean only as *'edible oil*' because such is not the major use of *'edible oil'*. Applying the common parlance test and also *'end use of the product'*, coconut oil is predominantly understood by the users namely dealers/consumers only as *'Hair Oil*' and not as *'edible oil'* and hence, classifiable only under Chapter 33 and not under Chapter 15.

50. After the amendment (w.e.f. 28.02.2005) what is relevant is '*suitability of the goods for being used as Hair Oil*' for classifying the same under **33.05**. 'Coconut Oil' packed in small sachets/containers suitable for being used as '*Hair Oil'* is classifiable under Chapter Tariff Item **3305**. When a good is classifiable under tariff item **3305,** by virtue of amended Section Note 2 to Section VI, no other classification is permissible. By consideration of the materials placed on record and also applying the *'Common Parlance Test',* coconut oil packed in small sachets/containers

understood in the market by dealers/consumers as '*Hair Oil*' is classifiable under Chapter 33, tariff item **33 05**. In the case of MAIPL, 'Coconut Oil' packed in small sachets/containers suitable for being used as 'Hair Oil' are classifiable under Chapter **3305**. In case of 'Parachute', this is further fortified by various materials placed on record and also registration of its Trademark No.1033842 Class-3 Parachute associated with "Hair Oil, Hair lotion etc."

51. **Re. Contention HSN Notes to Chapter Note 3 of Chapter 33 is the same as it was prior to amendment:-** The Tribunal held that "*HSN Explanatory Notes to Chapter 33 were same before and after 28.02.2005.*" Moreover, Notes under Chapter 15 relating to 'Coconut Oil' in the HSN and Central Excise Tariff after 28.02.2005 are also identical. Mr. Bagaria, learned senior counsel for the assessee urged that the changes brought about by the amendment to Chapter Note 3 of Chapter 33 is of no significance since HSN Notes to Chapter Note 3 of Chapter 33 is exactly the same as in the Central Excise Tariff prior to amendment. It was submitted that Explanatory Notes in HSN clarified the purport, meaning, scope and effect of Chapter Note 3 of Chapter 33. It was submitted that since Central Excise Tariff is based on HSN, for resolving any dispute relating to tariff classification, HSN is a safe guide. In this regard, reliance is placed upon ***Collector of Central Excise, Shillong v. Woods Craft Product Ltd.*** (1995) 3 SCC 454, ***Commissioner of Customs and Central Excise, Goa v. Phil Corporation Limited*** (2008) 17 SCC 569 and ***O.K. Play (India) Ltd. v.***

Commissioner of Central Excise, Delhi-III, Gurgaon (2005) 2 SCC 460.

52. The Harmonized Commodity Description and Coding System (HS) of tariff nomenclature, generally referred to as the "Harmonized System of Nomenclature (HSN)" is an internationally standardized system of names and numbers for classifying traded products, developed and maintained by the World Customs Organization (WCO) (formerly the Customs Co-operation Council), an independent inter-governmental organization [*Source: World Customs Organization:http:// www. wcoomd.org/en/topics/nomenclature/overview/what-is-the-harmonized-system. aspx*]. Along with the HSN, are the Explanatory Notes. They do not form an integral part of the Harmonized System Convention. However, as approved by the WCO Council, they constitute the official interpretation of the Harmonized System at the international level and are an indispensable complement to the System. [*World Customs Council, retrieved from: http://www.wcoomd.org/ en/topics/nomenclature/instrument-and-tools/tools-to-assist-with-the-classification-in-the-hs/explanatory-notes.aspx*].

53. The Central Excise Tariff Act, 1985 (CETA) is based on the Harmonized System of Nomenclature (HSN), which is an internationally accepted product coding system formulated under the auspice of the General Agreement on Tariffs Trade (GATT). In ***Commissioner of Customs and Central Excise, Goa v. Phil Corporation Ltd.*** (2008) 17 SCC 569, this Court explained the HSN as under:-

> "29. ...The Central Excise Tariff Act is broadly based on the system of classification from the international convention called the Brussels

> Convention on the Harmonized Commodity Description and Coding System (Harmonized System of Nomenclature) with necessary modifications. HSN contains a list of all the possible goods that are traded (including animals, human, hair, etc.) and as such the mention of an item has got nothing to do whether it is manufactured and taxable or not"

54. HSN Explanatory Notes provide a commentary on the scope of each heading, giving a list of the main products included and excluded, together with technical description of the goods concerned (their appearance, properties, method of production and uses) and practical guidance for their identification. The Explanatory Notes also clarify the scope of particular sub-headings wherever appropriate. However, HSN or the Explanatory Notes thereon cannot supersede the relevant notes contained in the Tariff Schedule. They can be relied upon as a safe guide in cases of doubt.

55. In the case in hand, we are concerned with classification of goods - 'Coconut Oil' between two Chapters both falling within first Schedule to Central Excise Tariff Act, 1985. For proper appreciation, we may usefully refer to the relevant HSN Explanatory Notes relating to Chapter 33 and Chapter 33 of CETA Tariff Notes:-

HSN Explanatory Notes	**CETA Tariff Notes**
Chapter 33 **Essential Oils and Resinoids;** **Perfumery, Cosmetic or Toilet Preparations** **Chapter Notes:** **.....** **3.** Heading 33.03 to 33.07 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use. **General** ..... Headings 33.03 to 33.07 include products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use	**Chapter 33** **Essential Oils and Resinoids, Perfumery, Cosmetic or Toilet Preparations** **Notes:** **.....** **3.** Heading 3303 to 3307 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings of a kind sold by retails for such use.

as goods of these headings and put up in packings of a kind sold by retail for such use (see Note 3 to this Chapter). The products of headings 33.03 to 33.07 remain in these headings whether or not they contain subsidiary pharmaceutical or disinfectant constituents, or are held out as having subsidiary therapeutic or prophylactic value (see Note 1(d) to Chapter 30). However, prepared room deodorizers remain classified in heading 33.07 even if they have disinfectant properties of more than a subsidiary nature. Preparation (e.g. varnish) and unmixed products (e.g. unperfumed powdered talc, fuller's earth, acetone, alum) which are suitable for other uses in addition to those described above are classified in these headings only when they are:- (a) In packings of a kind sold to the consumer and put up with labels, literature or other indications that they are for use as perfumery, cosmetic or toilet preparations, or as room deodorizers; or (b) Put up in a form clearly specialized to such use (e.g. nail varnish put up in small bottles furnished with the brush required for applying the varnish).	
33.05 -PREPARATIONS FOR USE ON THE HAIR ..... This heading covers:- **1.** ..... **2.** ..... **3.** ..... **4.** Other hair preparations, such as brilliantines, hair oils, creams ("pomades") and dressings, hair dyes and bleaches used on the hair; cream-rinses	3305- Preparations for use on the hair ..... 3305 90 - Other -- Hair Oil

56. So far as Chapter Note 3 to Chapter 33, CETA Amendment Act, 2004 has the same Chapter Note as the HSN. However, the general explanation of HSN adds further conditions for the product to be classifiable under Chapter 33 regarding packings of a kind sold to the consumer and put up with labels and literatures that they are for use for such purpose. To put it in other words, Chapter Note 3 to Chapter 33 as contained in the HSN,

General Explanation to the said HSN Notes places certain conditions, i.e.:-

(a) [when the goods are] In packings of a kind sold to the consumer and put up with labels, literature or indications that they are for use as perfumery, cosmetic or toilet preparations, or as room deodorizers; or

(b) Put up in a form clearly specialized to such use (e.g. nail varnish put up in small bottles furnished with the brush required for applying the varnish).

It is important to note that the pre-amended Schedule (prior to CETA amendment) also had the same rigours as HSN Notes such as "*the product requiring labels and literatures including the specialized use*" (as Chapter Note 2 to Chapter 33). However, after the amendment with effect from 28.02.2005, the Parliament consciously chose not to impose or place the same rigours for classification of goods under this Heading and deleted the same. The Parliament intentionally and consciously deleted these conditions in the new (renumbered) Chapter Note 3 to Chapter 33 of the Tariff Schedule to the CETA. Therefore, to apply these conditions, post-amendment would be against the intent of the Parliament. Hence, HSN Chapter Note cannot be relied upon to determine the classification rather the CETA Tariff Chapter Note must be considered.

57. The relevant HSN Explanatory Notes and competing CETA Tariff Note, insofar as Section Note 2 to Section VI is as under:-

HSN Explanatory Notes	CETA Tariff Notes
Section VI **Products of the Chemical or Allied Industries** **Section Notes.**	**Section VI** **Products of the Chemical or Allied Industries**

..... 2. Subject to Note 1 above, goods classifiable in Heading Nos. 30.04, 30.05, 30.06, 32.12, 33.03, 33.04, 33.05, 33.06, 33.07, 35.06, 37.07 or 38.08 by reason of being put up in measured doses or for retail sale are to be classified in those headings and in no other heading of the Nomenclature. 3. Goods put up in sets consisting of two or more separate constituents, some or all of which fall in this Section and are intended to be mixed together to obtain a product of Section VI or VII, are to be classified in the heading appropriate to that product, provided that the constituents are:- (a) having regard to the manner in which they are put up, clearly identifiable as being intended to be used together without first being repacked; (b) presented together; and (c) identifiable, whether by their nature or by the relative proportions in which they are present, as being complementary one to another. **General** **Section Note 1** **.....** **Section Note 2** Section Note 2 provides that goods (other than those described in headings 28.43 to 28.46) which are covered by heading 30.04, 30.05, 30.06, 32.12, 33.03, 33.04, 33.05, 33.06, 33.07, 35.06, 37.07 or 38.08 by reason of being put up in measured doses or for retail sale are to be classified in those headings notwithstanding that they could also fall in some other heading of the Nomenclature. For example, sulphur put up for retail sale for therapeutic purposes is classified in **heading 30.04** and not in Heading 25.03 or 28.02, and dextrin put up for retail sale as a glue is classified in **heading 35.06** and not in heading 35.05.	**After amendment** **Notes:** **.....** 2. Subject to Note 1 above, goods classifiable in Headings 3004, 3005, 3006, 3212, 3303, 3304, 3305, 3306, 3307, 3506, 3707 or 3308 by reason of being put up in measured doses or for retail sale are to be classified in those headings and in no other heading of this schedule.

58. As discussed earlier, CETA Amendment Act, 2004 amended Section Note 2 to Section VI. The rigours placed for a product to be classified under these Headings are not prevalent in the CETA although they are prevalent in the HSN. The legislature consciously chose not to import the conditions and rigours placed in the HSN Explanatory Notes and the following as found in HSN does not find place in the amended Section Note

2 to Section VI:-

> "(a) having regard to the manner in which they are put up, clearly identifiable as being intended to be used together without first being repacked;
> (b) presented together; and
> (c) identifiable, whether by their nature or by the relative proportions in which they are present, as being complementary one to another."

It is clear from the above, that the HSN General Explanatory Notes to Section VI are to an extent in conflict with the Notes contained in Tariff Schedule to the Central Excise Tariff Act, 1985. Therefore, the Notes contained in the Central Excise Tariff Act shall prevail over the Notes contained in HSN.

59. In ***Collector of Central Excise, Shillong v. Woods Craft Product Ltd.*** (1995) 3 SCC 454, this Court held HSN is a safe guide for interpretation and entitled to great consideration. The relevant portion of the said judgment is as under:-

> **"12.** It is significant, as expressly stated, in the Statement of Objects and Reasons, that the Central excise tariffs are based on the HSN and the internationally accepted nomenclature was taken into account to "reduce disputes on account of tariff classification". Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the HSN. This being the expressly acknowledged basis of the structure of Central excise tariff in the Act and the tariff classification made therein, in case of any doubt the HSN is a safe guide for ascertaining the true meaning of any expression used in the Act. The ISI Glossary of Terms has a different purpose and, therefore, the specific purpose of tariff classification for which the internationally accepted nomenclature in HSN has been adopted, for enacting the Central Excise Tariff Act, 1985, must be preferred, in case of any difference between the meaning of the expression given in the HSN and the meaning of that term given in the Glossary of Terms of the ISI."

60. However, in ***Camlin Ltd. v. Commissioner of Central Excise, Mumbai*** (2008) 9 SCC 82, this Court held that if the entries under HSN and the entries under the Central Excise Tariff Act are different then reliance cannot be placed upon HSN Notes for the purposes of classification of goods under the Central Excise Tariff. The relevant portion of the said judgment is as under:-

> **"24.** In our considered view, the Tribunal erred in relying upon the HSN for the purpose of marker inks in classifying them under Chapter Sub-Heading 3215.90 of the said Tariff. The Tribunal failed to appreciate that the entries under the HSN and the entries under the said Tariff are completely different. As mentioned above, it is settled law that when the entries in the HSN and the said Tariff are not aligned, reliance cannot be placed upon HSN for the purpose of classification of goods under the said Tariff. One of the factors on which the Tribunal based its conclusion is the entries in the HSN. The said conclusion in the order of the Tribunal is, therefore, vitiated and, accordingly, set aside. We agree with the findings recorded by the Commissioner (Appeals)."

61. As discussed earlier, after the amendment to CETA, there is a material difference between the relevant notes provided in the HSN as against those provided in the Tariff Schedule to the CETA, 1985. The general explanation as provided in the HSN cannot be applied as they stand to explain the Notes in the HSN which is materially different from the Notes contained in the Tariff Schedule of the CETA. In instances of conflict, the Notes contained in the Tariff Schedule to the CETA will prevail over that of the HSN. One of the factors on which the Tribunal based its conclusion was the entries in HSN and its observation that entries in HSN to Chapter 33 and CETA Tariff Notes of Chapter 33 are one and the same even after amendment. In my view, the Tribunal erred in not keeping in view the principles laid down by this Court in ***Camlin Ltd. case*** that when the Notes

in HSN and the Tariff are not aligned, reliance cannot be placed upon the HSN for the purpose of classification of the goods.

62. **Circular No.145/56/95-CX dated 31.08.1995** was issued in the context of classification of 'Coconut Oil' under the Central Excise Tariff as it existed prior to the amendment. The said circular clarified that for classification of 'Coconut Oil' under Chapter 33 (as *'Hair Oil'*), it must satisfy the requirements of Chapter Note 2 of Chapter 33. As per the said circular, though 'Coconut Oil' may be capable of being used as 'Hair Oil', the product must satisfy the criteria of label/literature on packing of 'Coconut Oil' showing its use as 'Hair Oil' as per Note 2 to Chapter 33. The relevant part of the Circular dated 31.08.1995 is as under:-

> "6. .....In the CET Heading 3305 covers "preparations for use on the hair".
> .....
> 9. Therefore, keeping in view of Chapter Notes, HSN Notes, the Tariff Conference of 1991, the report of D.G. (A.E.) and the opinion of Chief Chemist, CRCL, it is felt that coconut oil whether pure or refined and whether packed in small or large containers merits classification under Heading No.1503 as long as it satisfies the criteria of 'fixed vegetable oil' laid down in Chapter Note 3 of Chapter 15. It is also clarified that if the containers bear labels/literature, etc., indicating that it is meant for application on hair, as specified under Note 2 of Chapter 33 and/or if the coconut oil has additives (other than BHA) or has undergone processes which made it a preparation for use on hair as mentioned in Chapter Note 6 of Chapter 33 then the coconut oil may merit classification under Chapter 33."

63. In exercise of powers under Section 37B of Central Excise Act, 1944, CBEC issued Circular No.102/05/2006-CX-3 dated 03.06.2009 withdrawing the Circular No. 145/56/95-CX dated 31.08.1995. After referring to the amendment and old and new Chapter Notes and Section Notes, the Circular stated that the 'Coconut Oil' packed in small containers of sizes upto 200 ml shall be classified under Heading 3305. The relevant portion

of the said Circular reads as under:-

> "5. .....Hence, in view of the amendments/insertion of Chapter Note and Section Note, the classification of coconut oil would depend upon the fact as to how the majority of the customers use the said product. Therefore, if coconut oil is packed in packages which are generally meant for sale in retail as hair oil, in that case, the said product would be classified as hair oil under heading 3305, even though few consumers may use it as edible oil.
> Through field survey, it has been gathered that smaller packs upto the sizes of 200ml are normally used as hair oil by the customers. It has also been reported that in small pack sizes upto 200ml are stacked along with other hair oil care preparations/cosmetics and not in edible oil section in the retail shops. Enquiries also reveal that small packs of coconut oil displayed at the hair care shelves are used as hair oil only and the customer ask for the smaller packages or the sachets for using them as 'hair oil'.
> 6. In view of foregoing discussion, it is concluded that coconut oil packed in containers upto 200ml may be considered as generally used as hair oil. This would bring uniformity in assessment in respect of coconut oil sold in small containers irrespective of the fact as to whether its use as hair oil is indicated on containers/labels or not. Therefore, following instructions/directions are issued:-
> (i) Circular No. 145/56/95-CX dated 31.08.1995 stands withdrawn.
> (ii) the coconut oil packed in small container of sizes upto 200ml shall be classified under heading 3305."

64. In ***Raj Oil Mills Ltd. v. Commissioner, Central Excise*** 2014 (314) ELT 541 (Tri. - Mumbai), it was held that repacking of 'Edible Grade Coconut Oil' from bulk pack to retail pack of 200 ml and less are not classifiable under Chapter 33 of Central Excise Tariff which covers "*cosmetic or toilet preparations*" rather it would be classifiable under Chapter 15 which covers "*animal or vegetable fats and oils and their cleavage products*". Challenging the judgment of the Tribunal in ***Raj Mills Ltd. case,*** the appeals preferred by the Revenue in CA Nos. 2023-37 of 2014 were dismissed on 17.12.2014 by holding as under:-

> "1. We have heard learned Additional Solicitor General appearing for the Revenue.
> 2. Delay condoned.
> 3. We find no merit in the Civil Appeals. The Civil Appeals are dismissed."

After the judgment of the Supreme Court, the Circular dated 03.06.2009

was withdrawn by another Circular No.103/01/2015-CX-3 dated 12.10.2015. Now, the issue of classification of 'Coconut Oil' as per the Circular dated 12.10.2015 is to be decided by the field by taking into consideration the facts of the case read with the judicial pronouncements. Merely because the 'Coconut Oil' of retail pack of 200 ml or less are not classifiable under Chapter 33 of the Central Excise Tariff and the civil appeals preferred by the Revenue were dismissed by the Supreme Court, it does not mean that it has attained finality. As pointed out earlier, civil appeals preferred by the Revenue were dismissed by a non-speaking order at the admission stage and hence, the "*Doctrine of Merger*" is not applicable. When the order passed by the Supreme Court is not a speaking order, it is not correct to assume that the Supreme Court had decided implicitly all the questions in relation to the merits of the order. Now, the position (as per Circular dated 12.10.2015) is to decide the issue of classification by the field taking into consideration the facts of the case read with judicial pronouncements.

65. **Conclusion**: Impugned orders of the Tribunal are set aside and the appeals preferred by the revenue are allowed with the following findings:-

i. Tribunal is not right in holding that Chapter 15 covers all varieties of 'coconut oil' both edible and non-edible. The judgments relied upon by the Tribunal and the Board's circular dated 31.08.1995 were prior to 2004 amendment. The Tribunal was not right in relying upon the earlier orders/circular dated 31.08.1995 prior to amendment to base its conclusion that coconut oil both edible and non-edible merits classification under Chapter 15. Hence the

impugned orders of the Tribunal are liable to be set aside.

ii. After the amendment (w.e.f. 28.02.2005) what is relevant is '*suitability of the goods for being used as Hair Oil*' for classifying the same under **33.05**. 'Coconut Oil' packed in small sachets/containers suitable for being used as '*Hair Oil'* is classifiable under Chapter Tariff Item **3305**. When a good is classifiable under tariff item **3305,** by virtue of amended Section Note 2 to Section VI, no other classification is permissible.

iii. Rule 3(a) states that the most specific description will be preferred over the more general one. In the present case, when item description is read with the Chapter Notes, Section Notes and the tests for classification that is Tariff Item 1513.19.00 and 3305.90.19 are equally specific. Hence, as per Rule 3(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 classification. Hence, the coconut oil manufactured by the respondents could rightly be classified under heading 3305.90.19, as it occurs last in the numerical order of the tariff.

iv. By consideration of the materials placed on record and also applying the *'Common Parlance Test',* coconut oil packed in small sachets/containers understood in the market by dealers/consumers as '*Hair Oil*' is classifiable under Chapter 33, tariff item **33 05**.

v. After the amendment to Central Excise Tariff Act (w.e.f. 28.02.2005), there is material difference between the relevant Explanatory Notes in the HSN as against those provided in the Tariff Schedule to Central Excise Tariff Act, 1985. As held in ***Camlin Ltd. v. Commissioner of Central Excise, Mumbai*** (2008) 9 SCC 82, when the Explanatory Notes in the HSN and the Notes tariff schedule are not aligned, reliance cannot be placed upon HSN for the purpose of classification of goods.

vi. In the case of MAIPL, 'Coconut Oil' packed in small sachets/containers suitable for being used as 'Hair Oil' are classifiable under Chapter **3305**. In case of 'Parachute', this is further fortified by various materials placed on record and also registration of its Trademark No.1033842 Class-3 Parachute associated with "Hair Oil, Hair lotion etc."

vii. Circular dated 03.06.2009 and dismissal of appeals preferred by the Revenue in CA Nos. 2023-37 of 2014 (dated 17.12.2014) at the admission stage by non-speaking order, the '*Doctrine of Merger*' is not applicable.

……J.
[R. BANUMATHI]

New Delhi;
April 13, 2018

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1766 OF 2009

COMMISSIONER OF CENTRAL EXCISE ...APPELLANT

VERSUS

MADHAN AGRO INDUSTRIES (I) PVT. LTD. ...RESPONDENT

WITH

CIVIL APPEAL Nos.6703-6710 OF 2009

O R D E R

In view of the difference of opinion in terms of the judgments pronounced by us in the present appeals, the Registry is directed to place the said appeals before Hon'ble the Chief Justice of India for appropriate orders.

.....J.
(RANJAN GOGOI)

.....J.
[R. BANUMATHI]

NEW DELHI;
APRIL 13, 2018