

**In The Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench At Ahmedabad**

**Appeal No. C/11591-11593/2016-DB**

[Arising out of OIO-06-COMMISSIONER-2016 dated 25.05.2016 passed by the  
Commissioner of CUSTOMS-JAMNAGAR (PREV)]

M/s Shamrock Chemie Pvt. Ltd  
Paresh D Patel  
Shashikant Pandey Vice President

Appellant

Vs

C.C. Jamnagar (Prev)

Respondent

**Represented by:**

For Appellant: Shri J.C. Patel & Hari Om Tiwari (Advocate)  
For Respondent: Shri Sameer Chitkara (A.R.)

**CORAM:**

**HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)**  
**HON'BLE MR. RAJU, MEMBER (TECHNICAL)**

Date of Hearing: 30.08.2018  
Date of Decision: 27.11.2018

**Final Order No. A / 12649-12651 /2018**

***Per: Ramesh Nair***

The brief facts of the case are that the appellant are engaged in manufacture, interalia of Detergent, Soaps and Surfactants. The other appellants are Sh. Paresh D. Patel, Director of appellant company and Sh. Shashikant Pandey, Vice President of the appellant company. In Nov 2014, the appellant filed 4 shipping bills at Pipavav Port for export of "Linear Alkyl Benzene Sulphonic Acid Sodium Salt (Powder Form) (Industrial Surfactant)". The said goods were classified under ITC Heading No. 38170019 which covers "Mixed Alkyl Benzenes". The customs Officers assessed the shipping bills and granted "Let Export Order". Out of total 22 containers, on 26.11.2014, the DRI Officers drew samples from 4 containers and the same were sent for test to Customs

Laboratory, Kandla. Further samples were drawn on 16.12.2014 and sent for test to Customs Laboratory, Kandla. As per the test report, the samples were found to consist of active matter namely, Linear Alkyl Benzene Sulphonic Acid (LABSA) Sodium Salt and other ingredients such as Sodium Chloride, Calcium, Magnesium, Iron, etc. The content of LABSA sodium salt varied from 0.13% to 1.08% by weight. The content of Sodium Chloride varied from 89% to 95% by weight. The DRI contended that since the major constituent in the goods was Sodium Chloride and since the active matter "LABSA" was only in the range of 0.13% to 1.08%, the goods cannot be considered as "Linear Alkyl Benzene Sulphonic Acid Sodium Salt (Industrial Surfactant)" and that accordingly, the description of the goods given in the shipping bills as "Linear Alkyl Benzene Sulphonic Acid Sodium Salt (Industrial Surfactant)", amounted to mis-declaration and consequently the goods were liable for confiscation under Section 113 (i) of the Customs Act, 1962. A SCN dated 03.06.2015 was issued wherein apart from the charge of goods liable to confiscation for mis-declaration of the description of goods, it was also contended that the value which was declared in the shipping bills for "Linear Alkyl Benzene Sulphonic Acid Sodium Salt (Industrial Surfactant)" cannot be accepted since the goods were not "Linear Alkyl Benzene Sulphonic Acid Sodium Salt (Industrial Surfactant)". It was contended that since the major constituent of the good was Sodium Chloride, the goods should be considered as Sodium chloride or common salt and accordingly, the notice sought to adopt the value of contemporary exports of salt. It was further contended in the SCN that the appellant had filed shipping bills in respect of Advance Authorization and as per the Standard Input-Output Norms; the export goods should contain 72% of active matter. The SCN, however, did not

dispute the classification of the goods under ITC Heading No. 38170019 and did not seek to re-classify the goods under any other Heading. After consideration of the reply of the appellant filed vide letter dated 23.2.2016 and also on the basis of test report and written submission, the Principal Commissioner of Customs (Prev), Jamnagar passed his order dated 25.05.2016 whereby he has held that description of the goods had been mis-declared and he has accordingly confiscated the said goods under Section 113(i) of the Customs Act, 1962 and imposed redemption fine of Rs. 15 Lacs. Further, he has re-determined the value of the goods by adopting the value of contemporary exports of Common Salt. He has also held that goods are classifiable under ITC Heading 25.01 as against Heading 38170019 under which the goods were assessed. The adjudicating authority also imposed the penalties under Section 114 (iii) of the Customs Act, 1962. He has imposed a further penalty of Rs. 5 Lacs on Paresh D. Patel, Director under Section 114AA of the Customs Act, 1962.

2. We have heard both the sides and considered the submissions made by both the sides. Before going into the overall merit of the case, we observed that the adjudicating authority has decided the classification of the export goods exported as not classifiable under 3817009 as declared by appellant and correctly classified under ITC Heading 25.01. It is also observed that in the SCN, there is no proposal for change of classification, therefore, in the adjudication order deciding the classification is not legal and proper and beyond the SCN, Since the classification has a bearing on the overall case of nature of product as well as valuation, due to the ambiguity created by adjudicating authority in deciding the classification without any proposal for the same in the SCN, the entire matter needs to be re-considered.

3. In this peculiar situation, we are of the prima facie view that the adjudicating authority had no jurisdiction to decide the issue of classification without having any such proposal in the SCN. Accordingly, we set aside the impugned order and remand the matter to the adjudicating authority for passing a fresh order after taking into account our above observation. All the issues are kept open. The appeals are allowed by way of remand to the adjudicating authority.

*(Pronounced in the open court on 27.11.2018)*

**(Raju)**  
**Member (Technical)**

**(Ramesh Nair)**  
**Member (Judicial)**

Seema