[2024] 12 S.C.R. 893 : 2024 INSC 1002

Commissioner of Central Excise, Salem
v.
M/s Madhan Agro Industries (India) Private Ltd.

(Civil Appeal No. 1766 of 2009)

18 December 2024

[Sanjiv Khanna, Sanjay Kumar* and R. Mahadevan, JJ.]

Issue for Consideration

Issue arose whether pure coconut oil, packaged and sold in small quantities ranging from 5 ml to 2 litres, would be classifiable as 'Edible oil' under Heading 1513, titled 'Coconut (Copra) oil, etc.', in Section III-Chapter 15, or as 'Hair oil' under Heading 3305, titled 'Preparations for use on the hair', in Section VI-Chapter 33, of the First Schedule to the Central Excise Tariff Act, 1985.

Headnotes†

Central Excise Tariff Act, 1985 – First Schedule, Chapter 15, Section III, Heading 1513, titled 'Coconut (Copra) oil, etc.'; Chapter 33 Section VI Heading 3305, titled 'Preparations for use on the hair' – Pure coconut oil, packaged and sold in small quantities ranging from 5 ml to 2 litres – Classification of, as 'Edible oil' under Heading 1513 or as 'Hair oil' under Heading 3305:

Held: Pure coconut oil sold in small quantities as 'edible oil' would be classifiable under Heading 1513, unless the packaging thereof satisfies all the requirements set out in Chapter Note 3 in Section VI-Chapter 33 of the First Schedule read with the General/ Explanatory Notes under the corresponding Chapter Note 3 in Chapter 33 of the Harmonized System of Nomenclature, whereupon it would be classifiable as 'hair oil' under Heading 3305 in Section VI Chapter 33 thereof – Pure coconut oil is suitable for multiple uses – Notwithstanding, when a specific heading was created in Chapter 15, viz., Heading 1513, for 'coconut oil' along with other oils, it would not stand excluded therefrom so as to be classified as a cosmetic product under Heading 3305 in Chapter 33 in Section VI of the First Schedule, unless all the conditions required therefor

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are satisfied – Not only must the coconut oil be suitable for use as 'hair oil', but it must also be put in packaging sold in retail for such particular use, as hair oil – Mere fact that coconut oil is also capable of being put to use as a cosmetic or toilet preparation, by itself, would not be sufficient to exclude such oil from the ambit of 'coconut oil' and subject it to classification as 'hair oil' as 'coconut oil' is name-specific – Packaging of the coconut oil in the instant cases clearly demonstrated that it was being sold as 'edible oil' and all parameters that had to be met in that regard were duly complied with – Small-sized containers are a feature common to both 'edible oils' as well as 'hair oils' – Thus, there must be something more to distinguish between them for classification of such oil, be it under Chapter 15 or under Chapter 33, other than the size of the packing – Relevant headings in the First Schedule to the Act of 1985 corresponding with the entries in HSN, there can be no distinction drawn between the two and the Explanatory Notes in the HSN would have to be given due effect while interpreting Heading 1513 in the First Schedule – Thus, the coconut oil marketed and sold by the respondents during the relevant period must necessarily be classified as edible oil. [Paras 40-49]

Interpretation of statutes – Taxing statutes – Principle of interpretation – 'Common parlance test' :

Held: Words therein must be construed in consonance with their commonly accepted meaning in the trade and their popular meaning – When a word is not explicitly defined or there is ambiguity as to its meaning, it must be interpreted for the purpose of classification in the popular sense, which is the sense attributed to it by those who are conversant with the subject matter that the statute is dealing with – This principle, known as the 'common parlance test', serves as good fiscal policy so as to not put people in doubt or quandary about their tax liability – Test is an extension of the general principle of interpretation of statutes for deciphering the mind of the law-maker but it is subject to certain exceptions-when there is an artificial definition or special meaning attached to the word in the statute itself, whereby the ordinary sense approach would not be applicable – Said test cannot be brought into play when there is no ambiguity and there is no difference in the clear heading in the First Schedule and the corresponding entry in the HSN. [Paras 35, 36]

Commissioner of Central Excise, Salem v.
M/s Madhan Agro Industries (India) Private Ltd.

Central Excise Tariff Act, 1985 – Central Excise Tariffs – Interpretation of entries – Reliance on the Harmonized System of Nomenclature-HSN and the Explanatory Notes:

Held: Once the Headings in the First Schedule to the Act of 1985 in perfect alignment with the corresponding entries in the HSN, the General/Explanatory Notes in the HSN would be applicable and cannot be ignored while classifying goods as per the headings in the First Schedule – If the headings/entries in the First Schedule to the Act of 1985 are different from the headings/entries in the HSN or if they are not fully aligned, reliance cannot be placed upon the HSN for the purpose of classifying those goods under the Act of 1985 – First Schedule to the Act of 1985 is based on the HSN, which is an internationally standardized system developed and maintained by the World Customs Organization for classifying products, and unless the intention to the contrary is found within the Act of 1985 itself, the HSN and the Explanatory Notes thereto, being the official interpretation of the Harmonized System at the international level, would be of binding guidance in understanding and giving effect to the headings in the First Schedule – It is only when a different intention is explicitly indicated in the Act of 1985 itself that the HSN would cease to be of guidance – Legislative intention to depart from the HSN must be clear and unambiguous. [Paras 16, 17, 34]

Case Law Cited

Commissioner of Customs and Central Excise, Amritsar (Punjab) v. D.L. Steels etc. [2022] 17 SCR 151 **: 2022 SCC OnLine SC 863;** *Collector of Central Excise, Shillong v. Wood Craft Products Ltd.* **(1995) 3 SCC 454;** *O.K. Play (India) Ltd. v. Commissioner of Central Excise, Delhi-III, Gurgaon* [2005] 1 SCR 1086 **: (2005) 2 SCC 460;** *Camlin Ltd. v. Commissioner of Central Excise, Mumbai* [2008] 12 SCR 1223 **: (2008) 9 SCC 82;** *B.P.L. Pharmaceuticals Ltd. v. Collector of Central Excise, Vadodara* [1995] 3 SCR 1235 **: (1995) Supp. 3 SCC 1;** *Commissioner of Central Excise, New Delhi v. Connaught Plaza Restaurant Pvt. Ltd., New Delhi* [2012] 11 SCR 365 **: (2012) 13 SCC 639;** *Alpine Industries v. Collector of Central Excise, New Delhi* [2003] 1 SCR 313 **: (2003) 3 SCC 111;** *Indo International Industries v. Commissioner of Sales Tax, Uttar Pradesh* [1981] 3 SCR 294 **: (1981) 2 SCC 528;** *Meghdoot*

Gramodyog Sewa Sansthan, U.P. v. Commissioner of Central Excise, Lucknow **(2005) 4 SCC 15;** *Dunlop India Ltd. v. Union of India and others* **[1976] 2 SCR 98 : (1976) 2 SCC 241;** *State of Haryana v. Dalmia Dadri Cement Ltd.* **[1988] 2 SCR 1 : AIR 1988 SC 342;** *HPL Chemicals Ltd. v. Commissioner of Central Excise, Chandigarh* **[2006] Supp. 1 SCR 125 : (2006) 5 SCC 208 – referred to.**

List of Acts

Central Excise Tariff Act, 1985; Central Excise Tariff (Amendment) Act, 2004; Central Excise Act, 1944; Food Safety and Standards Act, 2006; Drugs and Cosmetics Act, 1940; Edible Oils Packaging (Regulations) Order, 1998; Standards of Weights and Measures (Packaged Commodities) Rules, 1977.

List of Keywords

Pure coconut oil; 'Edible oil'; 'Hair oil'; Heading 1513, titled 'Coconut (Copra) oil, etc.'; 'Hair oil'; Heading 3305, 'Preparations for use on the hair'; General/Explanatory Notes; Harmonized System of Nomenclature; Multiple uses; Cosmetic product; Suitable for such use; Packaging of the coconut oil; Edible grade plastic; Burden of proof; Taxing statutes; Principle of interpretation; 'Common parlance test'; Central Excise Tariffs.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1766 of 2009

From the Judgment and Order dated 25.06.2008 of the Customs, Excise & Service Tax Appellate Tribunal South Zonal Bench at Chennai in Appeal No. E/111/08/MAS

With

Civil Appeal Nos. 6703-6710 of 2009

Appearances for Parties

N. Venkataraman, A.S.G., A.K. Panda, Sr. Adv., Gurmeet Singh Makker, H.R. Rao, Adit Khorana, Ms. Bani Dikshit, Sanjay Kumar Visen, Anirudh Bhat, B. Krishna Prasad, Mukesh Kumar Maroria, Advs. for the Appellant.

Commissioner of Central Excise, Salem v.
M/s Madhan Agro Industries (India) Private Ltd.

S.K. Bagadia, Arvind Datar, Harish N. Salve, Sr. Advs., Mahesh Agarwal, Rishi Agrawala, Ankur Saigal, Vipin Jain, Ms. Sayree Basu Mallik, Abhinabh Garg, Ramnath Prabhu, Karan Verma, Ms. Aditi Jain, E.C. Agrawala, Vishal Agarwal, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Sanjay Kumar, J.

1. The issue for consideration in these appeals filed by the Revenue is whether pure coconut oil, packaged and sold in small quantities ranging from 5 ml to 2 litres, would be classifiable as 'Edible oil' under Heading 1513, titled 'Coconut (Copra) oil, etc.', in Section III-Chapter 15, or as 'Hair oil' under Heading 3305, titled 'Preparations for use on the hair', in Section VI-Chapter 33, of the First Schedule to the Central Excise Tariff Act, 1985.

2. The Bench which heard these appeals earlier was divided in its opinion on the issue. Justice Ranjan Gogoi, as the learned Judge then was, was of the view that such coconut oil in small packings was more appropriately classifiable as edible oil under Heading 1513. Justice R. Banumathi, on the other hand, concluded that coconut oil, packed in small sachets/containers suitable for being used as hair oil, was classifiable as such under Heading 3305. In view of their difference in opinion, these appeals have been placed before us.

3. Insofar as Civil Appeal No. 1766 of 2009 is concerned, this issue is raised in relation to the duty payable for the period 01.04.2005 to 31.08.2007. As regards Civil Appeal Nos. 6703-6710 of 2009, it is contextual to the period 28.02.2005 to 28.02.2007. Taking note of this aspect and in view of the statement of the learned counsel for the respondents that the total revenue involved in these cases, excluding interest and penalties, would be about ₹40 crore, this Court requested the learned Additional Solicitor General, on 18.01.2023, to obtain instructions whether the issue would survive for consideration and whether the Revenue still wanted to press these appeals. On 25.01.2023, the learned Additional Solicitor General averred that the matters required to be resolved on merits. He produced letter dated 24.01.2023 addressed by the Additional Commissioner, Directorate of Legal Affairs, Central Board of Indirect Taxes and

Customs, Government of India, stating that the amount involved in these appeals, viz., the excise duty, penalties, redemption fine and interest, would aggregate to over ₹159 crores. According to him, the issue remained relevant due to pendency of similar cases at various levels.In its written submissions also, the Revenue asserted that the issue is not rendered academic as on date as matters relating to this issue were still pending and show-cause notices had also been issued in this regard under the GST regime, which presently holds the field.

4. Before we proceed to consider the issue on the facts obtaining and on merits, it would be apposite to take note of the statutory milieu germane thereto, both past and present.

Prior to 28.02.2005, i.e., before amendment of the First Schedule to the Central Excise Tariff Act, 1985 (hereinafter, 'the Act of 1985'), *vide* the Central Excise Tariff (Amendment) Act, 2004 [Act 5 of 2005], irrespective of the size of its packaging, coconut oil was treated as a 'vegetable oil' exigible to excise duty under Heading 15.03 in Chapter 15 in Section III of the First Schedule to the Act of 1985. Section III, Chapter 15 and the relevant Chapter Notes therein along with Heading 15.03, as they then stood, are extracted hereunder:

SECTION III

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

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) to (d) ……;

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

(f) …..

……

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).

Heading 15.03 read thus: -

Heading No.	Sub-heading No.	Description of goods	Rate of duty
15.03	**1503.00**	**Fixed vegetable oils, other than those of Heading No. 15.02**	**8 %**

Coconut oil, a vegetable oil, did not find mention in the oils named in Heading 15.02 and was, accordingly, classified under Heading 15.03.

5. In terms of this classification, the Central Board of Excise and Customs, Ministry of Finance (Department of Revenue), Government of India, issued Circular No. 145/56/95-CX dated 31.08.1995, due to doubts being expressed about coconut oil packed in small containers and as to whether it would be classifiable as a fixed vegetable oil or as a cosmetic preparation under the Act of 1985. The Board clarified that coconut oil, whether pure or refined and whether packed in small or large containers, merited classification under Heading 15.03 if it satisfied the criteria of 'fixed vegetable oil' in Chapter Note 3 of Chapter 15. It was further clarified that if the containers bore labels/literature indicating that it was meant for application on hair, as specified under Note 2 of Chapter 33 and/or if the oil had additives (other than BHA) or had undergone processes which made it a preparation for use on hair, as mentioned in Chapter Note 6 of Chapter 33, then the coconut oil merited classification under Chapter 33.

6. Section VI in the First Schedule to the Act of 1985 deals with "Products of the Chemical or Allied Industries" and Chapter 33 therein, referred to in the above Circular, is titled "Essential Oils and Resinoids; Perfumery, Cosmetic or Toilet Preparations". Relevant particulars in this Section, Chapter and heading, as they then stood, i.e., prior to the amendment in 2005, read as under:

SECTION VI

PRODUCTS OF THE CHEMICAL OR ALLIED INDUSTRIES

CHAPTER 33

ESSENTIAL OILS AND RESINOIDS; PERFUMERY, COSMETIC OR TOILET PREPARATIONS

Notes:

1. ……

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 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 – 5. ……

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.

Heading 33.05 in Chapter 33 read as under:

Heading No.	Sub-heading No.	Description of goods	Rate of duty
33.05		Preparations for use on the hair	
	3305.10	- Perfumed hair oils - *Other*	16%
	3305.91	– Hair fixer	16%
	3305.99	– Other	16%

7. While so, the Central Excise Tariff (Amendment) Act, 2004 [Act 5 of 2005] was promulgated by the Parliament and came into effect on 28.02.2005. Thereby, in exercise of power under Section 5 of the Act of 1985, the Central Government amended the First Schedule to the Act of 1985. Thereafter, the amended Chapter Notes in Chapter 15 in Section III, to the extent relevant, read as under:

SECTION III

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

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) to (d). ……;

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

(f) …....

SupplementaryNotes:

1. ……

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).

8. Headings in Chapter 15 also underwent a major change. Earlier, there were only 8 headings, i.e., Heading 15.01 to Heading 15.08, but after the amendment, the headings range from 1501 to 1522. Heading 1513 is relevant for our purposes and it reads as under:

Tariff Item	Description of goods	Unit	Rate of duty
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	kg.	8%
1513 19 00	-- Other	kg.	8%
	- Palm kernel or babassu oil and fractions thereof:		
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%

9. Section VI, pertaining to 'Products of the Chemical or Allied Industries', also underwent a change. Section Note 2 therein now read thus:

SECTION VI

PRODUCTS OF THE CHEMICAL OR ALLIED INDUSTRIES

Notes:

1. .....

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.

10. Chapter 33 in Section VI was also amended. Chapter Note 3, pertaining to Headings 3303 to 3307, now reads as follows:

Chapter 33

ESSENTIAL OILS AND RESINOIDS, PERFUMERY, COSMETIC OR TOILET PREPARATIONS

Notes:

1 – 2. ….

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.

11. Post the amendment, Heading 3305 reads as under:

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	kg.	16%
3305 20 00	- Preparations for permanent waving or straightening	kg.	16%
3305 30 00	-- Hair lacquers	kg.	16%
3305	- *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%

12. The Act of 1985 also provides rules for interpretation of the First Schedule thereto. Rule 1 therein provides that classification of goods shall be determined according to the terms of the headings and any relative Section or Chapter Notes. However, the admitted position is that the Harmonized Commodity Description and Coding System [Harmonized System of Nomenclature (HSN)], brought out by the World Customs Organization, reflects internationally accepted norms and is extensively used the world over for resolving disputes relating to tariff classification. It was adopted in 1983 and enforced in January, 1988. In ***Commissioner of Customs and Central Excise, Amritsar (Punjab) vs. D.L. Steels etc.***,[1] this Court noted that this multipurpose international product nomenclature harmonizes description, classification and coding of goods and, while the primary objective of the HSN is to facilitate and aid trade, it is also for other diverse purposes like internal taxes, monitoring import tariffs, quota controls, rules of origin, transport statistics, freight tariffs, compilation of national accounts and economic research and analysis. It was further noted that, in the present times, given the widespread adoption of the HSN by over 200 countries, it would be very difficult to deal with an international trade issue involving commodities, without adverting to the HSN.

13. As a matter of fact, the Statement of Objects and Reasons of the Central Excise Tariff Bill, 1985, the precursor to the Act of 1985, recorded that a technical study group was set up to conduct a comprehensive inquiry into the structure of Central Excise Tariffs and the tariffs that were suggested by this group for 137 items were based on the internationally accepted nomenclatures in the HSN. Significantly, the Central Excise Tariff (Amendment) Act, 2004 (Act 5 of 2005), effected amendments in the First Schedule to the Act of 1985 with the sole intention of fine-tuning the tariff descriptions therein with the HSN. The Statement of Objects and Reasons dated 13.07.2004 therein noted that the First Schedule to the Act of 1985 was based on a six-digit classification code while the Department of Revenue had developed an eight-digit classification code based on the HSN for the purposes of classification of excisable goods in India. It was also noted that the Directorate General of Foreign

1 [2022] 17 SCR 151 : 2022 SCC OnLine SC 863

Trade and the Directorate General of Commercial Intelligence of Statistics had already adopted the eight-digit classification code for the purpose of import trade control policy and for collection of statistics respectively. Reference was made to demands from several quarters to adopt the eight-digit classification code for Central Excise also in order to accommodate the demand from the trade and industry for adoption of a common commodity classification based on the internationally adopted HSN to be used for all trade-related transactions to facilitate international and domestic trade. The amendment Bill, therefore, proposed to expand the six-digit classification in the First Schedule into an eight-digit classification, so as to remove difficulties arising from divergence in classification by different departments and would also facilitate international trade. It was clarified that the proposed amendments did not make any change in the existing rates of Central Excise duties and, hence, they did not involve revenue implication.

14. Notably, in ***Collector of Central Excise, Shillong vs. Wood Craft Products Ltd.***,[2] a 3-Judge Bench of this Court held 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

2 (1995) 3 SCC 454

given in the HSN and the meaning of that term given in the Glossary of Terms of the ISI.

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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.'

15. Again, in ***O.K. Play (India) Ltd. vs. Commissioner of Central Excise, Delhi-III, Gurgaon***,[3] another 3-Judge Bench of this Court affirmed that the scheme of Central Excise Tariffs is based on the HSN and the Explanatory Notes appended thereto and, therefore, the HSN along with its Explanatory Notes provide a safe guide for interpretation of entries.

16. *Ergo*, in resolving disputes relating to tariff description and classification, a ready reckoner is the internationally accepted nomenclature in the HSN. That being said, we must hasten to reiterate what was pointed out in ***Wood Craft Products Ltd.*** (*supra*). If the headings/entries in the First Schedule to the Act of 1985 are different from the headings/entries in the HSN or if they are not fully

3 [2005] 1 SCR 1086 : (2005) 2 SCC 460

aligned, reliance cannot be placed upon the HSN for the purpose of classifying those goods under the Act of 1985.

17. To sum up, the First Schedule to the Act of 1985 is based on the HSN, which is an internationally standardized system developed and maintained by the World Customs Organization for classifying products, and unless the intention to the contrary is found within the Act of 1985 itself, the HSN and the Explanatory Notes thereto, being the official interpretation of the Harmonized System at the international level, would be of binding guidance in understanding and giving effect to the headings in the First Schedule. It is only when a different intention is explicitly indicated in the Act of 1985 itself that the HSN would cease to be of guidance. In effect, the legislative intention to depart from the HSN must be clear and unambiguous. For instance, in ***Camlin Ltd. v. Commissioner of Central Excise, Mumbai***[4], this Court found that there was an inconsistency between the Central Excise tariff description and the entry in the HSN and, therefore, reliance upon the HSN entry was held to be invalid. It was affirmed that it is only when the entry in the HSN and the tariff description in the First Schedule to the Act of 1985 are aligned that reliance would be placed upon the HSN for the purpose of classification of such goods under the correct tariff description.

18. It would, therefore, be relevant to examine the HSN in the context of the changes made in the First Schedule to the Act of 1985 in 2005 apropos 'coconut oil'. Section III and Chapter 15 in the HSN are titled the same as Section III and Chapter 15 in the First Schedule and read thus:

SECTION III

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

CHAPTER 15

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

4 [2008] 12 SCR 1223 : (2008) 9 SCC 82

Chapter Notes.

1. - This Chapter does not cover:

(a) to (d) …

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

(f) …

19. Heading 15.13 in the HSN is identical to Heading 1513 in Chapter 15 in Section III of the First Schedule, after its amendment, and reads thus:

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**

(A) COCONUT (COPRA) OIL

This oil is obtained from the dried flesh or copra (as it is called) of the coconut (*Cocos nucifera*). Fresh coconut flesh can also be used. This non-drying oil is pale yellow or colourless and is solid below 25^{0}C. Coconut oil is used in soaps, in cosmetic or toilet preparations, for making lubricating greases, synthetic detergents, laundering or cleaning preparations and as a source of fatty acids, fatty alcohols and methyl esters.

Refined coconut oil is edible and is used for food products such as margarine, dietary supplements.

20. Section VI of the HSN is titled 'Products of the Chemical or Allied Industries' as is Section VI in the First Schedule to the Act of 1985. Section Note 2 therein reads as follows:

SECTION VI

PRODUCTS OF THE CHEMICAL OR ALLIED INDUSTRIES

Section Notes.

1. …

2. - Subject to Note 1 above, goods classifiable in 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 and in no other heading of the Nomenclature.

It is, therefore, identical to the amended Section Note 2 in Section VI in the First Schedule to the Act of 1985. The General Note under Section Note 2 in the HSN is of relevance and reads as follows:

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.

21. Chapter Note No. 3 in Chapter 33 of the HSN, titled Essential Oils and Resinoids; Perfumery, Cosmetics or Toilet Preparations' is identical to the amended Chapter Note 3 in Chapter 33 in Section VI of the First Schedule, and it reads as follows:

CHAPTER 33

ESSENTIAL OILS AND RESINOIDS; PERFUMERY, COSMETIC OR TOILET PREPARATIONS

Chapter Notes.

1. …

2. …

3. Headings 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.

22. The General Notes thereunder, to the extent relevant, read thus:

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 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 deodorisers 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, 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 deodorisers; or

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

23. Heading 33.05 in the HSN reads as follows:

33.05 – PREPARATIONS FOR USE ON THE HAIR.

3305.10 - Shampoos

3305.20 - Preparations for permanent waving or straightening

3305.30 - Hair lacquers

3305.90 - Other

This heading covers:

(1) to (3) ---

(4) Other hair preparations, such as brilliantines; hair oils, creams ("pomades") and dressings; hair dyes and bleaches used on the hair; cream-rinses.

24. Comparison of the relevant headings in the First Schedule to the Act of 1985, both pre-2005 amendment and post-2005 amendment, with the corresponding headings in the HSN reveals that Chapter Note 1(e) in Chapter 15 in Section III of the First Schedule remained the same even after the 2005 amendment and was identical to Chapter Note 1(e) in Chapter 15 of Section III of the HSN. This Note clarified that Chapter 15 would not be applicable to fatty acids, etc., including cosmetic or toilet preparations, which would fall in Section VI. However, the headings in Chapter 15 in Section III of the First Schedule increased to twenty-two after the amendment, with effect from 28.02.2005. Heading 15.03 in the pre-amended Chapter 15 dealt with fixed vegetable oils, excluding those named in Heading 15.02. Coconut oil, not being one of them, was classifiable under Heading 15.03 and there was no issue about it, as was clarified *vide* Circular dated 31.08.1995. However, post the 2005 amendment, Heading 1513 was created specifically for coconut oil and the other named oils. This heading dealt with crude coconut oil and other forms of coconut oil and its fractions. All that was required thereunder was that the coconut oil should not have been chemically modified. Significantly, the post-2005 amendment description of coconut oil in Heading 1513 was a replication of its description in Heading 15.13 in the HSN.

25. When it comes to Section VI of the First Schedule, pertaining to 'Products of the Chemical or Allied Industries', the post-2005 amended Section Note 2 was more or less identical to Section Note 2 in Section VI of the HSN. However, Chapter Note 2 of Chapter 33 in Section VI of the First Schedule, prior to the 2005 amendment, was more detailed than the corresponding Chapter Note 3 in Chapter 33 in

Section VI of the HSN. In the HSN, this Chapter Note stated that Headings 33.03 to 33.07 would apply to products suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use. However, the unamended Chapter Note 2 in Chapter 33 of the First Schedule to the Act of 1985 went further by stating that Headings 33.03 to 33.07 would apply to products 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. There was thus a difference in the Chapter Note in the First Schedule and the corresponding Chapter Note in the HSN.

26. Interestingly, the expanded Chapter Note in the First Schedule was a reflection of what was stated in the General Notes in Chapter 33 of the HSN. Whatever was stated in the expanded Note with regard to the products being 'put up in packings with labels, literature or other indications that they were for use as cosmetic or toilet preparations or put up in a form clearly specialized to such use and that products, whether or not they contain subsidiary pharmaceutical or antiseptic constituents or are held out as having subsidiary, curative or prophylactic value, would also be included under the headings in question', is set out in the very same words in the General Notes in Chapter 33 of the HSN. At that time, full conformity was not there between the First Schedule and the HSN and that was, perhaps, the reason why what was clarified in the General Notes in Chapter 33 of the HSN was directly incorporated in Chapter Note 2 in Chapter 33. Notably, in ***B.P.L. Pharmaceuticals Ltd. vs. Collector of Central Excise, Vadodara***,[5] this Court held that for a product to be classified as a cosmetic under Chapter 33 in Section VI of the First Schedule, it must first be a cosmetic, i.e., it should be suitable for use as 'goods falling under Headings 3303 to 3308' and it must be put in packing with a label or literature or other indication, showing that it is intended for use as a cosmetic preparation. This decision was rendered in the year 1995 and was

5 [1995] 3 SCR 1235 : (1995) Supp. 3 SCC 1

in keeping with the then Chapter Note 2 in Chapter 33 of the First Schedule.

27. As already noted hereinbefore, Act 5 of 2005 was aimed at bringing about full conformity between the First Schedule to the Act of 1985 and the HSN and amendments were made accordingly in the First Schedule. Post the 2005 amendment, Chapter Note 3 in Chapter 33 in Section VI of the First Schedule was made a verbatim reproduction of the corresponding Chapter Note 3 in Chapter 33 in the HSN. However, as it is an admitted position that the Explanatory Notes in the HSN would also be binding once the entry in the HSN corresponds with the description of the goods in the First Schedule to the Act of 1985, the General Notes in Chapter 33 in the HSN would apply. In consequence, what was set out earlier in Chapter Note 2 in Chapter 33 of the First Schedule is now brought in by way of the General Notes in Chapter 33 of the HSN and the removal thereof from the Chapter Note in Chapter 33 of the First Schedule has no significance, except for the fact that it brought about complete parity between the First Schedule to the Act of 1985 and the HSN.

28. Therefore, it would not be sufficient to merely show that the products in question are suitable for use as goods falling under Headings 3303 to 3307 in Chapter 33 of the First Schedule and were put up in packings of a kind sold by retail for such use, but it must also be demonstrated that such products, which are suitable for other uses in addition to those described and classified in Headings 3303 to 3307, are in packings of a kind sold to consumers and are put up with labels, literature or other indications that they are for use as perfumery, cosmetic or toilet preparations or they are put up in a form clearly specialized to such use, for example - acetone put up in small bottles along with a brush for applying it, thereby indicating its use as nail polish remover. In consequence, all the conditions prescribed, as above, have to be satisfied before products suitable for multiple uses can be treated as goods classifiable under Headings 3303 to 3307.

29. The Central Government was also conscious of the effects of the amendments made by the Act of 2005. Circular No. 890/10/2009-CX dated 03.06.2009 was issued by the Central Board of Excise and Customs, Ministry of Finance, Government of India, in relation to classification of coconut oil packed in small containers. Thereby, the Board clarified that when ‘hair oil’ is printed on the container/

label, there can be no dispute that it is classifiable as hair oil under Chapter 33 and not as edible oil under Chapter 15. The Board noted that Chapter Note 2 in Chapter 33 was modified with effect from 28.02.2005 and the amendment was carried out to align the Central Excise Tariff with the internationally accepted HSN. The Board further noted that in view of the amendment, the clarification issued, *vide C*ircular dated 31.08.1995, required modification. Having said so, the Board strangely concluded that coconut oil packed in containers of up to 200 ml may be considered as generally used as hair oil and that this would bring uniformity in assessment of such oil sold in small containers, irrespective of whether its use as hair oil was indicated on the containers. The Circular dated 31.08.1995 was withdrawn and coconut oil in small quantities, up to 200 ml, was directed to be classified under Heading 3305.

30. However, this understanding of the Board was clearly not in keeping with the General Notes in Chapter 33 of the HSN. Perhaps realizing the same, the Board then issued Circular No. 1007/14/2015-CX dated 12.10.2015. Therein, it was noted that decisions had been rendered on the issue by Tribunals/Courts holding that, just because the retail packs of coconut oil were in sizes of 200 ml or less, the same could not be presumed to be meant for use as hair oil and the same would not be classifiable under Heading 3305. The Board, accordingly, withdrew the Circular dated 03.06.2009 and left the issue of classification of coconut oil packed in small containers of up to 200 ml to be decided in the field, taking into consideration judicial pronouncements and the facts of individual cases.

31. It is also relevant to note that in Heading 1513 in Chapter 15 in Section III of the First Schedule, there is no mention of the size, volume or weight of the packaging and coconut oil, whether or not refined, is classifiable under this heading as long as it is not chemically modified. On the other hand, whenever and wherever it was intended that the weight of the product was a factor to be considered for classification, the headings provided for the same. For instance, Heading 0902 in Chapter IX, titled 'Coffee, Tea, Mate and Spices', in Section II of the First Schedule deals with Tea, whether or not flavoured, and the sub-headings thereunder specifically detail the weight of the packaging for the purpose of classification. Similarly, Heading 1806, pertaining to 'Chocolate and other food preparations containing cocoa', in Chapter 18, titled 'Cocoa and cocoa preparations', in Section IV of

the First Schedule indicates that as per the weight of the preparation, the classification under Sub-Heading 1806 20 00 would apply. The absence of weight or volume specifications in relation to 'coconut oil' in Heading 1513 is, therefore, of significance.

32. Coming to the facts in the appeals on hand, Civil Appeal No. 1766 of 2009 pertains to Madhan Agro Industries (India) Pvt. Ltd., Kangeyam, Tamil Nadu, which manufactures and markets coconut oil in packages ranging from 5 ml to 2 litres, under the name and style of 'Shanti Coconut Oil'. This oil was sold as 'edible oil' during the relevant period, i.e., 01.04.2005 to 31.08.2007. Show-cause notices dated 16.02.2007, 05.09.2007, 06.09.2007, 19.09.2007 and 28.11.2007 were issued to the company by the Central Excise authorities proposing to levy duty treating the coconut oil sold during that period as 'hair oil', classifiable under Heading 3305 in Chapter 33 in Section VI of the First Schedule, and not under Heading 1513 in Chapter 15 in Section III of the First Schedule. Interest and penalties were also proposed to be levied. Order-in-original dated 12.12.2007 was passed by the Commissioner of Customs and Central Excise, Salem, holding to that effect and confirming the demand for excise duty treating the coconut oil sold as 'hair oil' and also levying interest thereon along with redemption fine and penalties. Aggrieved thereby, Madhan Agro Industries (India) Pvt. Ltd. filed Appeal No. E/111/08/MAS before the Customs Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai. By Final Order No. 638/08 dated 25.06.2008, the Tribunal allowed the appeal in the light of the amendments brought about in the year 2005 and the Explanatory Notes in the HSN. The Tribunal held that the coconut oil sold during the relevant period was classifiable as 'edible oil' under Heading 1513 in Chapter 15 of Section III of the First Schedule to the Act of 1985.

33. Civil Appeal Nos. 6703 to 6710 of 2009, eight appeals in all, pertain to the period 28.02.2005 to 28.02.2007. Four of these appeals relate to M/s. Marico Ltd., Mumbai, which manufactures and markets pure coconut oil as 'edible oil' under the name 'Parachute'. The remaining four appeals relate to job-workers of M/s. Marico Ltd., who receive its coconut oil in bulk and market the same after packing it in small containers, ranging from 50 ml to 2 litres. The four job-workers are M/s. Aishwarya Industries, M/s. Moreshwar Industries, M/s. Shivam Enterprises and M/s. Sowparnika Enterprises, all situated at Pondicherry (now, Puducherry). Show-cause notices were issued in

July, 2007, by the Central Excise authorities proposing to treat the coconut oil so sold by them as 'hair oil', classifiable under Heading 3305, which led to Orders-in-original being passed on 27th and 28th of February, 2008, confirming the demand of excise duty against the four job-workers and M/s. Marico Ltd., treating the coconut oil as 'hair oil' and also levying penalty and interest. However, the appeals filed by M/s. Marico Ltd. and its four job-workers before the Customs Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, were allowed, *vide* Final Orders No. 1068 to 1075 of 2008 dated 30.07.2008. It is against these orders passed by the Tribunal that the Revenue is before us by way of these appeals filed under Section 35L(b) of the Central Excise Act, 1944.

34. Though much stress has been laid by the Revenue upon the fact that pure coconut oil is suitable for use as 'hair oil' and is, in fact, used as such by many people, this contention does not further the case of the Revenue, given the clarity of the headings in the First Schedule to the Act of 1985 which are in perfect alignment with the corresponding entries in the HSN. Once the entries are aligned and reflect the same position, the General/Explanatory Notes in the HSN would be applicable and cannot be ignored while classifying goods as per the headings in the First Schedule. This position is well settled, as pointed out by this Court in ***Wood Craft Products Limited*** (*supra*).

35. We may now deal with the next point – the 'common parlance test'. A well settled principle of interpretation of taxing statutes is that words therein must be construed in consonance with their commonly accepted meaning in the trade and their popular meaning. When a word is not explicitly defined or there is ambiguity as to its meaning, it must be interpreted for the purpose of classification in the popular sense, which is the sense attributed to it by those who are conversant with the subject matter that the statute is dealing with. This principle, known as the 'common parlance test', serves as good fiscal policy so as to not put people in doubt or quandary about their tax liability. The test is an extension of the general principle of interpretation of statutes for deciphering the mind of the law-maker but it is subject to certain exceptions - for example, when there is an artificial definition or special meaning attached to the word in the statute itself, whereby the ordinary sense approach would not be applicable [See ***D.L. Steels*** (*supra*)].

36. However, we find that the reliance presently placed by the Revenue upon the 'common parlance test' is utterly misplaced. The said test would have to be understood in the proper perspective and cannot be brought into play when there is no ambiguity and there is no difference in the clear heading in the First Schedule and the corresponding entry in the HSN. In ***Commissioner of Central Excise, New Delhi vs. Connaught Plaza Restaurant Pvt. Ltd., New Delhi***,[6] this Court observed that classification of excisable goods shall be determined according to the headings and corresponding Chapter or Section Notes but where these are not clearly determinative of the proper classification, the same shall be effected according to the general rules of interpretation and according to the common parlance understanding of such goods. It was pointed out that fiscal statutes are framed at a point of time but are meant to apply for significant periods of time thereafter and they cannot, therefore, be expected to keep up with nuances and niceties. It was held that the terms of the statutes must be adapted to developments of contemporary times rather than being held entirely inapplicable and it is for this precise reason that Courts apply the 'common parlance test' every time parties attempt to differentiate their products on the basis of subtle and finer characteristics.

37. Earlier, in ***Alpine Industries vs. Collector of Central Excise, New Delhi***,[7] this Court observed that, in interpreting tariff entries in taxation statues like the Excise Act, where the primary object is to raise revenue and, for that purpose, various products are differently classified, the entries must not be understood in their scientific/ technical sense and must be construed as per their popular meaning, i.e., the meaning that would be attached to them by those using the product. However, as already noted above, this exercise would be undertaken when a product is not clearly defined or specifically dealt with in the headings in the First Schedule to the Act of 1985 and the corresponding HSN entries.

38. Long prior thereto, in ***Indo International Industries vs. Commissioner of Sales Tax, Uttar Pradesh***,[8] this Court held that any term or

6 [2012] 11 SCR 365 : (2012) 13 SCC 639

7 [2003] 1 SCR 313 : (2003) 3 SCC 111

8 [1981] 3 SCR 294 : (1981) 2 SCC 528

expression defined in a taxing statute must be understood in the light of the definitions given in the Act, in the absence of which the meaning of the term as understood in common parlance or commercial parlance must be adopted.

39. It is also to be noted that Rule 1 of the General Rules of Interpretation in the First Schedule to the Act of 1985 must be applied in the first instance and only if classification cannot be determined thereunder, recourse would have to be taken to the other Rules specified in the General Rules. Once the determination can be made under Rule 1, the question of applying other tests relatable to the other rules would not arise. In consequence, when there is no ambiguity or confusion about the classification of a particular product in the light of the clear heading in the First Schedule to the Act of 1985 and the corresponding entry in the HSN, resort to tools such as the 'common parlance test' would not arise.

40. Presently, it is an admitted fact that pure coconut oil is suitable for multiple uses. That notwithstanding, when a specific heading was created in Chapter 15, *viz.,* Heading 1513, for 'coconut oil' along with other oils, it would not stand excluded therefrom so as to be classified as a cosmetic product under Heading 3305 in Chapter 33 in Section VI of the First Schedule, unless all the conditions required therefor are satisfied. As already noted, such conditions formed part of Chapter Note 2 in Chapter VI of the First Schedule itself, prior to the 2005 amendment, but after that amendment, whereby the said Chapter Note was brought into conformity with Chapter Note 3 in Chapter 33 of the HSN, the Explanatory/General Notes in the HSN in relation to the said Chapter Note would have to be fully satisfied. In effect, not only must the coconut oil be suitable for use as 'hair oil', but it must also be put in packaging sold in retail for such particular use, i.e., as hair oil. The phrase 'suitable for such use' under Headings 3303 to 3307 in Chapter Note 3 would have to be read in conjunction with the Explanatory Notes thereto, which categorically state that such packaging must be accompanied with labels, literature or other indications that the product is intended for use as a cosmetic or toilet preparation or it must be put in a form clearly specialized to such use - as in the case of acetone marketed in small bottles, along with an applicator brush, indicating its use as nail polish remover.

41. The mere fact that coconut oil is also capable of being put to use as a cosmetic or toilet preparation, by itself, would not be sufficient to exclude such oil from the ambit of 'coconut oil' and subject it to classification as 'hair oil' as 'coconut oil' is name-specific. It is not in dispute that the packaging of the coconut oil in the cases on hand clearly demonstrated that it was being sold as 'edible oil' and all parameters that had to be met in that regard were duly complied with. Edible coconut oil requires to be packed in containers using edible grade plastic. The coconut oil so sold must satisfy the requirements of the Food Safety and Standards Act, 2006, and be packaged in conformity with the Edible Oils Packaging (Regulations) Order, 1998. Further, edible oil would have a shorter shelf life than oil meant for cosmetic purposes and must meet the Indian Standards Specifications prescribed for edible oil which are different from the standards for hair oil. Significantly, the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, provide that 'edible oil' can be packed in specified sizes of 50 ml, 100 ml, 200 ml, 500 ml, 1 litre or 2 litres.

42. Shanti Coconut Oil, produced and marketed by Madhan Agro Industries (India) Pvt. Ltd., bore 'Agmark' certification from the concerned authorities to qualify as a Grade-I coconut oil, fit for human consumption. The fact that such edible coconut oil was sold in smaller containers would not, by itself, be indicative of it being packaging of a kind fit for use as 'hair oil'. One may choose to buy one's cooking oil in small quantities, be it for economic or for health reasons or due to the inclination to use fresh oil in one's food preparation, and the smaller size of the packaging of such oil cannot be taken to mean that it is to be used as 'hair oil' without any pointer to that effect, be it by way of a label or literature or by any other indication that it is to be used as 'hair oil'. Notably, the Board's Circulars dated 03.06.2009 and 12.10.2015 were issued only because of this doubt being raised in the field that edible oil can also be purchased in small quantities.

43. Small-sized containers are a feature common to both 'edible oils' as well as 'hair oils'. Therefore, there must be something more to distinguish between them for classification of such oil, be it under Chapter 15 or under Chapter 33, other than the size of the packing. Stress was also laid by the Revenue on the fact that Shanti Coconut Oil was marketed in containers depicting a popular film actress with flowing tresses and it was contended that in the light of such marketing, the oil sold was obviously meant for use as 'hair oil' and

not as 'edible oil'. However, such an advertisement is not conclusive, in itself, to classify the oil as 'hair oil'. Reference may be made to ***Meghdoot Gramodyog Sewa Sansthan, U.P. vs. Commissioner of Central Excise, Lucknow,***[9] wherein this Court held that the mere fact that the product in that case was sold in a packing depicting a lady with flowing hair was not determinative of such product being intended as a preparation for use on the hair. This Court considered the composition and curative properties of the product to ultimately conclude that the product was classifiable as a 'medicament' under Heading 3003 in Chapter 30 of the First Schedule.

44. Further, registration of the trademark 'Parachute' by M/s. Marico Ltd. for 'hair oil' is not sufficient to classify the coconut oil sold by it, in its entirety, as hair oil. As rightly noted in the impugned final orders, 'Parachute' trademark was also registered by the company for Edible Oil (Class 29), Coffee/Tea (Class 30), Pharmaceuticals (Class 5) and Non-Alcoholic Beverages (Class 32). Therefore, the trademark, by itself, does not indicate that every product sold thereunder is the same and meant only for one use. Significantly, M/s. Marico Ltd. also markets various coconut-based hair oils, containing ingredients such as perfumes, etc., which are manufactured under a separate license obtained under the Drugs and Cosmetics Act, 1940, and classified as preparations for use on the hair, thereby falling under Heading 3305.

45. The argument of the Revenue that pure coconut oil should invariably be classified under Heading 3305 is, therefore, liable to be rejected. This argument completely loses sight of the General/Explanatory Notes in relation to Chapter Note 3 in Chapter 33 of the HSN and the fact that the said Chapter Note 3 is identical to Chapter Note 3 in Chapter 33 of the First Schedule to the Act of 1985. It is for the Revenue to take a stand by way of legislative action in the event it chooses to treat pure coconut oil marketed in small quantities differently from 'Coconut oil' in Heading 1513. Having failed to do so and given the fact that the relevant headings in the First Schedule to the Act of 1985 are corresponding with the entries in the HSN, there can be no distinction drawn between the two and the Explanatory Notes in the HSN would have to be given due effect while interpreting

9 (2005) 4 SCC 15

Heading 1513 in the First Schedule to the Act of 1985. In consequence, the coconut oil marketed and sold by the respondents during the relevant period must necessarily be classified as edible oil.

46. Pertinently, in ***Dunlop India Ltd. vs. Union of India and others***,[10] a 3-Judge Bench of this Court pointed out that it is good fiscal policy to not put people in doubt and quandary about their liability to pay duty and that when an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it would be against the very principle of classification to deny it that parentage and consign it to an orphanage of the residuary clause. Applying that standard, once a specific heading was created for coconut oil in the First Schedule, something more would be required before such oil can be excluded therefrom and classified under the general heading pertaining to toilet and cosmetic preparations. Equally important is certainty and consistency in the stand of the Revenue.

47. Reliance placed by the Revenue on ***State of Haryana vs. Dalmia Dadri Cement Ltd.***,[11] in support of its contention that the expression 'for use' can only mean 'intended for use' and not 'actual use', is misplaced as that decision turned upon the language of Section 5(2)(a)(iv) of the Punjab General Sales Tax Act, 1948, and the said interpretation cannot be applied *mutatis mutandis* in the present case, as the wording of the provisions presently under consideration and the rules of interpretation applicable thereto are entirely different. The argument of the Revenue that the fact that edible coconut oil marketed by the respondents could also be used as hair oil is therefore not sufficient to classify the same under Heading 3305 with nothing further. As pointed out by this Court in ***HPL Chemicals Ltd. vs. Commissioner of Central Excise, Chandigarh***,[12] classification of goods is a matter relating to chargeability and the burden of proof is squarely upon the Revenue if it intends to classify the goods under a particular heading or sub-heading different from that claimed by the assesses. In such an event, the Revenue had to adduce proper evidence and discharge that burden of proof in the context of the

10 [1976] 2 SCR 98 : (1976) 2 SCC 241

11 [1988] 2 SCR 1 : AIR 1988 SC 342

12 [2006] Supp. 1 SCR 125 : (2006) 5 SCC 208

classification entries, which it failed to do satisfactorily in the cases on hand.

48. On the above analysis, we are of the opinion that pure coconut oil sold in small quantities as 'edible oil' would be classifiable under Heading 1513 in Section III-Chapter 15 of the First Schedule to the Central Excise Tariff Act, 1985, unless the packaging thereof satisfies all the requirements set out in Chapter Note 3 in Section VI-Chapter 33 of the First Schedule to the Central Excise Tariff Act, 1985, read with the General/Explanatory Notes under the corresponding Chapter Note 3 in Chapter 33 of the Harmonized System of Nomenclature, whereupon it would be classifiable as 'hair oil' under Heading 3305 in Section VI-Chapter 33 thereof.

49. The impugned orders, holding to that effect, therefore do not brook interference on any count. The appeals are bereft of merit and are accordingly dismissed.

Parties shall bear their own costs.

Result of the case: Appeals dismissed.

[†]*Headnotes prepared by:* Nidhi Jain