

**AUTHORITY FOR ADVANCE RULINGS
(CENTRAL EXCISE, CUSTOMS AND SERVICE TAX)
NEW DELHI**

Hon'ble Mr. Justice P.K.Balasubramanyan (Chairman)
Mr. Y.G.Parande (Member)

The 27th January, 2012

Ruling No. AAR/ Cus / 01 /2012
In
Application No. AAR/44/Cus/4/2011

Applicant : M/s Arteco Coolants India Pvt. Ltd.,
Suite-41, Vatika Business Centre, Level-5,
Tech Park-I, Airport Road, Yerwada,
Pune-411006

Commissioner
Concerned : The Commissioner of Customs (Import)
Jawaharlal Nehru Custom House, Nhava
Sheva, Taluka Uran, District, Raigad
Maharashtra - 400707

Present for the
applicant : Sh. Ravikumar Yanamandra, CA

Present for the
Commissioner : Sh. S.N.Singh, Commissioner, (AR)
Sh. K.K. Jaiswal, Addl. Commissioner (AR)

Ruling

(By Y.G. Parande)

This is an application filed by M/s Arteco Coolants India Pvt. Ltd., Suite No. 41, Vatika Business Centre, Level 5, Tech Park 1, Airport Road, Yerwada, Pune (the applicant) under S. 28H of the Customs Act, 1962.

2. The applicant is a wholly owned subsidiary of M/s Artec NV, Belgium and proposes to undertake the manufacture of antifreeze coolants in India. For this purpose, they propose to import super concentrate, a constituent of the antifreeze coolants to be manufactured by them. Ruling has been sought on the classification of the super concentrate to be imported by them.

3. It has been stated in the application that Artec NV, Belgium develops and manufactures anti-freeze coolants and heat transfer fluids for automotive and industrial applications. It proposes to manufacture and sell antifreeze coolants in India through its subsidiary company i.e. the applicant.

4. The process of manufacture of the antifreeze coolants, as set out in the application, involves the blending of the base fluid, demineralized water and the super concentrates in the required proportions. The base fluid is mono ethylene glycol (MEG), which transfers the heat from internal combustion engine to the radiator where the fluid is cooled by airflow. Thus the heat transfer property of the antifreeze coolant is determined by the base fluid. It increases the boiling point of the solution. Super concentrate is a highly concentrated mixture of inorganic and organic chemicals and contributes to corrosion resistance. The corrosion protection property of any antifreeze coolant is determined by the type and level of corrosion inhibition additives in the antifreeze coolant. Super concentrate has physico-chemical properties like anti-foaming and oxidation stability. While it does not directly contribute to heat transfer, it helps the base fluid (MEG) in heat transfer by its corrosion protection. The quantity of demineralized water depends upon the required freezing or corrosion protection.

5. While super concentrates are proposed to be imported from abroad, the other constituents are proposed to be procured locally. It is these imported super concentrates in respect of which a ruling has been sought.

Super concentrate

6. The applicant has stated that they propose to import three types of super concentrate, namely

- CSC-GEN/ CSC-GEN-NM
- CSC-QFB
- CIP-FG

The composition of these as stated in the application is as follows:

CSC-GEN, CSC-GEN-NM	CSC-QFB	CIP-FG
Mono ethylene glycol	Monoethylene glycol	2-Ethyl hexanoic acid, Sodium salt
2-Ethyl hexanoic acid, sodium salt	Glycerol	Sebacic acid, sodium salt
Sebacic acid, sodium salt	2-Ethyl hexanoic acid, sodium salt	Water
Water, Tolyltriazole	Sebacic acid, sodium salt	Tolyltriazole
	Water, Tolyltriazole	
	Sodium metasilicate pentahydrate	

Each type of super concentrate meets different technical and customer requirements. The applicant also furnished the product data sheets detailing the technical description of the super concentrates. Applicant further states that the super concentrate adds corrosion protection properties to the engine coolant and in order to achieve the intended result of antifreeze preparation, the super concentrate has to be blended with monoethylene glycol & demineralized water that are locally procured. The blending results in increase in the concentration of MEG and dilution in the amount of super concentrate in the final product i.e. anti-freeze coolant.

7. As regards the classification the applicant feels that the super concentrate will fall classification under heading 3824 90 90 for the following reasons:

1. The super concentrate is a mixture of organic or inorganic chemical additives, the composition of which is not chemically defined.
2. It is not a product which is either occurring in nature or processed by the application of physical processes but is produced by a process of chemical transformation, resulting in a chemical compound used as corrosion inhibitor in

the final product i.e. antifreeze coolant. The goods are not separately defined elements or chemical compounds the composition of which is defined. Therefore classification under Chapters 28 or 29 of the Schedule to the Custom Tariff Act is ruled out.

3. For the same reasons the appropriate classification would appear to be under Chapter 38 of the said schedule.
4. Under the Chapter 38 the two possible headings for classification are either heading 3820 00 00, which covers anti-freezing preparations and prepared de-icing fluids or heading 3824 90 90 which covers, inter alia, products and preparations of the chemical or allied industries not elsewhere specified or included.
5. A perusal of headings 3801 to 3823 shows that they cover chemical preparations which are classifiable by reference to their properties or the fields of industry where they are used. The only entry that covers mixtures of chemicals not elsewhere specified or included is 3824.90.90 – Others.
6. As far as the possible classification under heading 38.20 is concerned. The relevant HSN note under Chapter 38 states, “This heading covers anti-freezing preparations and prepared de-icing fluids (e.g. mixture with a basis of glycol derivatives). Some anti-freezing preparations also act as coolants or as heat-exchange agents. The heading excludes prepared additives for mineral oils or for other liquids used for the same purposes as minerals oils (Chapter heading 38.11)”. From this it would appear that for an item to be classified under heading 38.20 it must be capable of being used as an anti freezing coolant directly in the form in which it is imported.
7. There exists a difference between the raw material (super concentrate) and the final chemical mixture (anti-freeze coolant). The super concentrate to be imported by them cannot be used directly as an anti freeze coolant and is to be further used as an input in the manufacture of anti freezing coolants to be marketed by them. The primary purpose of super concentrate is to provide corrosion resistance. It cannot be used directly as an anti freeze coolant as the

concentration of corrosion inhibitors is very high and is required to be diluted further to the required degree.

8. Hence super concentrate cannot be regarded by itself as an anti-freezing mixture and does not merit classification under heading 3820.
9. In terms of the General Rules for Interpretation of Import Tariff, rule 2 (a) is inapplicable as the super concentrate does not have the essential characteristics of antifreeze coolant. According to rule 2(b), the classification of goods which contain more than one material or substance is to be done in accordance with rule 3. Hence, in accordance with rule 2, the goods in question cannot be classified under heading 3820. As regards rule 3, rule 3(a) provides that the heading which provides more specific description is to be preferred to the one providing a more general description. Even though anti freezing preparations is a more specific description, the subject goods cannot be used as anti freezing preparation by themselves and therefore cannot be classified under heading 38.20 by resorting to this rule. Rule 3 (b) stipulates that composite goods are to be classified as if they consisted of the component which gives them their essential character. In this case no single constituent chemical can be said to give the super concentrate its essential character. Hence, resort will have to be had to rule 3(c) according to which the goods are to be classified under the heading which occurs last in the numerical order.
10. Consequently the appropriate classification according to the applicants will have to be under the residuary entry 3824 90 90.

8. The applicant has also submitted a copy of a “binding tariff information” issued by Federal Public Service Finance, Central Administration for Customs and Excises, Brussels, clarifying to M/s Arteco NV, Belgium that super concentrate would be classifiable under heading 3824909799 based on General rules 1 and 6 for the interpretation of the Combined Nomenclature and the text of heading 3824, GS code 3824 90 GN code 3824 907 and TARIC code 3824 90 97 99. This entry reads:

Chemical preparations, not mentioned separately, of the sort to make coolants (after mixing with ethylene glycol and water) for combustion engines, containing no amines.

9. In his comments on the application, the concerned Commissioner, i.e. Commissioner of Customs (Imports), Jawaharlal Nehru Custom House, Nhava Sheva, pointed out that heading 3824.90.90 was a residuary entry and could be resorted to only on the basis of test results indicating the ingredients, composition, nature and end use of the product and observed that advance ruling may not be possible in the absence of these details. In response to the Commissioner's comments, the applicant obtained and produced technical reports dated July 27, 2011 and August 5, 2011 furnishing information about the composition and end use of the products from Chevron Technology, Ghent, Belgium. According to these reports the composition of the super concentrates was as follows:

CSC-GEN (CL00)

Monoethylene Glycol	> 70%
Organic Inhibitors	10 - 30%
Sodium Hydroxide	0 -15%
Water	0 – 10%
Anti-foam	<5%

CSC-QFB

Glycerol	> 50%
Monoethylene Glycol	10-25%
Water	0 – 10%
Organic Inhibitors	0 – 15%
Inorganic Inhibitors	0 - 5%
Sodium Hydroxide	0 – 15%
Anti - Foam	< 5%
Bittering Agent	< 5%
Dye	< 1%

CIP-FG

Water	40 -60%
Organic Inhibitors	20 – 35%
Sodium Hydroxide	10 – 25%
Anti-Foam	< 5%
Bittering Agent	< 5%

As to the end use, the technical reports stated that each of these were an inhibitor package used to manufacture antifreeze coolant by mixing with domestically procured monoethylene glycol in proper ratios and that they by themselves did not meet the critical requirements of engine coolant.

10. The case was heard for arguments on the admissibility on August, 26th 2011. On behalf the department, objections were raised on admissibility on the ground that the description of the product given in the application was too generic to enable a ruling on the correct classification. It was argued that the actual composition of the goods would be the determining factor for classification and, in its absence the applicant could not seek an advance ruling. Noting that the question as to whether the facts are adequate to render satisfactory ruling would necessarily have to be gone into when considering the application for the purpose of ruling, the Authority admitted the application reserving for the department the right to raise its contention at the final hearing.

11. The case was next heard on September 30th, 2011 when the applicant reiterated his submissions and furnished additional material including detailed chemical composition of the goods proposed to be imported, including the chemical names and exact proportions by weight of the different constituents in the super concentrates. A request was also made that the details may not be disclosed by the Authority in its order as the information contained in the technical reports submitted by them was confidential and the sole proprietary information of the company. Its uses for any purpose other than assessment of application by the Authority would be detrimental to the company's interest. As the department had not had time to examine the additional information submitted by the applicant, the case was adjourned.

12. The matter was finally heard on November 25, 2011. During the hearing the applicant reiterated his earlier submissions. He particularly emphasized that super concentrates, in the form in which they are imported, could not be used as antifreeze coolants. This is evident not only from the technical literature submitted by them, but also from the technical opinion given by the department's own laboratory, vide the letter dated 03.11.2011 from the Chemical Examiner Grade-I at Jawaharlal Nehru Custom House, Nhava Sheva, which the department had obtained based on the material furnished by the applicant. He also submitted that the manufacturing process for the antifreeze coolants involved something more than mere dilution as the blending of the various constituents had to be done to precise specifications. It was argued that it is only final product to be manufactured by them that would merit classification under heading 38.20 and the correct classification of the super concentrate would be under heading 38.24 only. That the super concentrate may have antifreeze properties would not by itself make it antifreeze preparation since it is an established fact that it cannot be used directly as an antifreeze coolant. They further referred to technical opinion given by the department's Chemical Examiner Grade-I based on the product literature and Ullman's Encyclopedia of Industrial Chemistry, Sixth Edition, Vol. 3 page 473-475 and Vol. 22 page 325, which clearly stated that antifreeze coolant must have minimum 90% concentration of mono ethylene glycol whereas the concentration of MEG in the products under import was much lower. The manufacturing process actually involved a further addition of MEG to enhance its concentration in the final product. Since the minimum requirement of MEG concentration for antifreeze coolant was not satisfied by the super concentrate, it could not qualify for description as an anti freeze preparation of heading 3820, nor could it be said to be possessing the essential characteristics of antifreeze preparations warranting classification under that heading by application of rule 3(b) of the General Rules for Interpretation.

12. The applicant reiterated the request not to disclose the exact composition of the product in the Authority's ruling, since it was proprietary information and disclosure could injure their interest.

13. The Authorized Representative arguing for the department on the other hand contested the submissions of the applicant. He argued that the goods would be appropriately covered by heading 3820 00 00 for the following reasons:

1. Two out of three products under consideration namely, CSC-GEN and CSC-QFB have MEG/Glycerol as their principal constituent. He submitted technical literature relating to Ethylene Glycol and Glycerol downloaded from the internet. That MEG and Glycerol are themselves antifreeze agents could not be disputed by the applicant and this is borne out by the technical literature on record.
2. He emphasized that heading 3820 00 00 referred to antifreeze preparations (emphasis supplied). According to him the fact that the super concentrate required dilution did not alter its basic characteristic which was that of antifreeze preparation. He referred to the product datasheet of M/s Chevron Technology, Ghent, Belgium which spoke of two types of antifreeze coolants - one requiring dilution to be used and other (pre-diluted) to be used as such. This is to according to him showed that super-concentrate even in the form in which it is imported clearly had all characteristic of anti-freeze preparation and merited classification under heading 38.20.
3. He also relied upon the technical opinion of the Chemical Examiner Grade I of Nhava Sheva Custom House which, inter alia, stated that the ingredients of the said products are being used in the preparation of anti-freeze coolant. Based on this he argued that the product had both anti-freeze and corrosion inhibiting properties and was nothing but incomplete or unfinished anti-freeze having essential character of anti-freeze. It was nothing but anti-freeze concentrate requiring to be diluted for use as engine coolant and was an anti-freezing preparation specifically mentioned in heading 3820 00 00.
4. He referred to the notes (A) and (B) under heading 3824 and argued that the coverage of these notes had no mention of any chemical mixtures even remotely connected with the products of the applicant and none of the items therein allowed the liberty of classifying the applicants products under the residual entry 3824.

5. He submitted that 38.24 was a residuary entry and resort to it was warranted only if the product could not clearly fall for classification under any of the more specific entries of chapter 38. The description of heading 3820 00 00 was clearly more specific and therefore it had to be preferred to the residuary entry i.e. 3824 90 90.
6. Further, from the product literature as well as the technical opinion, it was clear that the products were incomplete or unfinished anti-freeze having the essential characteristic of anti-freeze coolant. Therefore, by application of Rule 2(a) of the General Rules for Interpretation, they merited classification under heading 38.20.
7. He also submitted a statement of bills of entry relating to imports through the Nhava Sheva port which showed assessment of super concentrate under heading 38.20. The applicant submitted in this regard that in the absence of relevant details, this statement could not be relied upon.
8. As regards the third product namely, CIP-FG, according to the Authorized Representative, this too could not be covered by heading 38.24 as the coverage of HSN notes relating heading 38.24 did not seem to be even remotely connected with the said product. In response to the queries from the bench, he submitted that the product did not contain any ethylene glycol and did not seem to have any antifreeze properties and therefore its classification would have to be decided on merits.

14. We have considered the submissions.

15. The principal submission of the applicant is that the super concentrates cannot be used directly as antifreeze coolants and hence cannot be classified under heading 38.20. It is also submitted that the minimum concentration of MEG in the antifreeze coolant has to be 90% as mentioned in the technical opinion of the department's chemical examiner Grade I. They are using the imported goods for manufacture of antifreeze coolants by adding locally procured MEG and demineralized water in the required proportions and it is this final product that will be classified under heading 38.20 and cleared on payment of appropriate excise duty.

16. The contention of the Authorized Representative for the department on the other hand is that the super concentrates CSC-GEN and CSC-QFB already have all the constituents required for antifreeze coolant and the fact that they need to be diluted cannot alter the classification as the products have all the constituents required and possess the essential character of anti-freeze coolant. Hence by application of rule 2(a) of the Rules for Interpretation, they are appropriately classifiable under heading 38.20. The entry is for anti-freeze preparations and there is nothing in the heading to suggest that only fully ready to use antifreeze coolants can be classified in that heading. It is a more specific heading than the residuary heading claimed by the applicant and is to be preferred to the more general heading i.e. 3824. As far as the product CIP-FG was concerned, it was true that it did not contain any MEG/Glycol and its classification could be decided on merits.

17. According to the technical literature, MEG is a widely used heat transfer agent (coolant) for automotive and industrial applications. It is used in combination with water and corrosion inhibiting chemicals that provide corrosion resistance to enhance the performance and life of engines. MEG, having low freezing point, contributes to lowering the freezing point of the cooling mixture. Through properties termed as colligative properties, it also raises the boiling point of the mixture – thus enhancing the effective temperature range in which the coolant can operate. There is a continuous depression of freezing point as the concentration of MEG in water increases until a characteristic concentration is achieved – with the minimum freezing point being reached when the concentration of MEG in water is 70%. Beyond this concentration, the freezing point of the mixture starts rising again, which is why 100% glycol is never used as antifreeze. Boiling point elevation works in a similar manner though there is no maximum experienced (Source: Open source material submitted by the AR and Concise Encyclopaedia of Chemical Technology, Kirk and Othmer, Fourth Edition, pp161-162). Glycerol has similar uses in antifreezes although it has been overtaken by ethylene glycol in terms of extensive use. However, it is said to be staging a comeback on account of its non-toxicity. Technical literature also shows that the concentration of

MEG (and glycerol) in the final antifreeze coolant depends upon the requirements of particular engines or applications.

18. The following facts are undisputed:

1. In two of the products under consideration, MEG/Glycerol is a major constituent, along with other additives such as corrosion inhibitors.
2. MEG/Glycerol acts as a heat transfer agent and on account of its low freezing point provides antifreeze properties to the coolant.
3. The other ingredients provide corrosion resistance, which is an equally important feature of formulated antifreeze coolants.
4. The imported product cannot itself be used as anti-freeze coolant since the concentration of the anticorrosion agents or corrosion inhibitors is too high and requires to be adjusted to suitable levels for use as antifreeze coolant. Further, addition of MEG is also necessary to reach the desired concentration.

19. As far as the Rules for Interpretation are concerned, the AR has argued that the case is covered by rule 2(a) as the imported goods, namely CSC-GEN and CSC-QFB have the essential character of anti-freeze coolant. The applicant on the other hand argues that the case is not covered by rule 2(a) and by virtue of rule 2(b) the classification will have to be determined in accordance with rule 3, specifically rule 3(c).

20. A perusal of rules 2(a) and 2(b) of the General Rules for Interpretation of Import Tariff shows that while the former refers to “an article”, the latter refers to “a material or substance”. The former deals with incomplete or unfinished articles and articles presented unassembled or disassembled while the latter deals with mixtures and combinations of materials or substances. What is at issue is the classification of a chemical mixture. Hence, *prima facie*, it would appear that rule 2(a) would not apply to this case. The examples given in the relevant HSN explanatory notes to the General Rules for Interpretation of the Harmonized System seem to bear this out (e.g. bicycle without saddle or tyres, bicycle, unassembled or disassembled, with all components presented together). Equally importantly, notes (III) and (IX), under rule 2(a) state that in

view of the scope of headings of Sections I to VI, the provisions of rule 2(a) do not normally apply to goods of these sections. We are therefore of the view that rule 2(a) cannot apply to this case.

21. It is rule 2(b) that refers to mixtures and combinations of materials and substances and, having regard to the nature of the goods in question, will apply to the instant case if the goods are capable of being classified in two or more headings. The rule further states that the classification of goods consisting of more than one material or substance shall be according to the principles of rule 3. As explained in the relevant HSN notes, the effect of this rule is to extend the heading referring to any material or substance to include its mixtures and combinations with other materials or substances. It also extends any heading referring to goods of a given material or substance to include goods consisting partly of that material or substance. The notes further explain that such mixtures or combinations, if prima facie classifiable under two or more headings, must be classified in accordance with principles of rule 3.

22. To apply this rule, therefore, one has to first see whether the goods in question, prima facie, fall for classification under two or more headings.

23. The entry in heading 3820 00 00 reads “ANTI-FREEZING PREPARATIONS AND PREPARED DE-ICING FLUIDS”. The case turns upon the meaning of the word “preparations”. The word “preparations” has not been defined either in the tariff under this heading or in the relevant HSN notes. We have therefore to resort to the dictionary meaning of this word.

Chambers 21st Century Dictionary defines preparation to mean, *1 the process of preparing or being prepared. 2 something done by way of preparing or getting ready4 a medicine, cosmetic or other such prepared substance.*

Miriam Webster Dictionary defines preparation to mean *.....4 Something that is prepared; specifically : a medicinal substance that is made ready for use.*

Concise Oxford English Dictionary defines preparation to mean *1 the action or process of preparing or being prepared, 2 a specially made up substance, esp. a medicine or food.*

Webster's Third New International Dictionary defines preparation to mean *1 the action or process of making something ready for use or service5 something that is prepared: something that is made, equipped or compounded for a specific purpose.*

24. From the above it would appear that the word "preparations" refers to something that is made ready for use, which is clearly not the case here as it is established that the superconcentrates, in the form in which they are imported, cannot be put to use as anti-freeze coolants. Hence, they do not seem to answer the description "anti-freeze preparations". Therefore, rule 3(a) will not be applicable. As according to technical authorities cited the properties of anti-freezing and anti-corrosion are both important in anti-freeze preparations, it cannot be said that any one of them gives the anti-freeze mixture its essential character. Consequently, resort cannot be had to rule 3(b) as well to classify the goods under 3820 00 00. We have already held that rule 2(a) of the General Rules for Interpretation cannot apply to these goods. Therefore, on the basis of meaning of the word "preparations" and the inapplicability of rule 2(a), their classification under heading 3820 00 00 is ruled out. The product CIP-FG in any case contains no glycol or glycerol and as such has no anti-freeze properties.

25. The goods are undeniably products of chemical industry. We do not find any other specific headings of the tariff under which they could fall for classification. Consequently, their classification will have to be under the residuary entry of chapter 38 of the tariff i.e. heading 3824 90 90. As regards the argument of the AR that a perusal of the list of products mentioned in notes (A) and (B) of the HSN notes for heading 38.24 shows that the products mentioned therein are no way relatable to the goods in the present case, we observe that the said list is an inclusive and not an exhaustive list. It can therefore be only illustrative.

26. We accordingly rule that the super concentrates named CSC-GEN, CSC-QFB and CIP-FG shall be classified as products of the chemical industry under heading 3824 90 90 of the First Schedule to the Customs Tariff Act, 1975 and be assessed accordingly.

Pronounced on this the day 27th January, 2012. .

Sd/-

(Y.G.Parande)
Member

Sd/-

(P.K. Balasubramanyan)
Chairman