

Technical Concepts Vs. Commissioner Central Excise and

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Court : Authority for Advance Rulings

Decided On : Sep-07-2006

Reported in : (2006)(204)ELT251AAR

Judge : S S Quadri, S Pal, B Agrawal

Appellant : Technical Concepts

Respondent : Commissioner Central Excise and

Judgement :

Appellants: Technical Concepts International Limited Vs.

Syed Shah Mohammad Quadri, J. (Chairman), Somnath Pal and B.A. Agrawal,
Members For Appellant/Petitioner/Plaintiff: Tarun Gulati and Tushar Jaswal, Advs.

Central Excise Act, 1944 - Section 23C; Central Excise Tariff Act, 1985; Medicinal and Toilet Preparation (Excise Duties) Act, 1955 - Section 2 Metropol India Pvt. Ltd. v. CCE, Delhi 2003 (151) E.L.T. 460 (Tri-Del.); Baidyanath Ayurved Bhawan (P) Ltd. v. Excise Commissioner, U.P. and Ors. AIRBaidyanath Ayurved Bhawan (P) Ltd. v. Excise Commissioner, U.P. and Ors.* Advance Ruling Classification Auto Janitor Refill Auto Janitor Bio Refill and "Auto Sanitizer Refill Chapter 34 of Central Excise Tariff Act, 1985, as against Chapter 38 of Central Excise Tariff Act, 1985 Small quantity of ethyl alcohol required as input in manufacture of said item Held, if preparation in nature of perfumery, cosmetics and toilet preparation falls with meaning of Medicinal and Toilet Preparation Act and contains alcohol or

opium or Indian hemp and other narcotics, it would get excluded from purview of chapter 33 Preparation in question are cleaning preparation having a basis of organic surface active agent (other than soap) they are squarely covered by Tariff Item 3402. 10 of First Schedule to Central Excise Tariff Act, 1985 1. The question that has been posed by the applicant seeking advance ruling thereon under Section 23C of the Central Excise Act, 1944 is as follows: Whether the "Auto Janitor" and "Auto Sanitizer" merit classification: (i) Under Chapter 34 of the Central Excise Tariff Act, 1985 and liable to Central Excise duty; or (ii) Under Chapter 38 of the Central Excise Tariff Act, 1985 and liable to Central Excise duty.

2. In the statement of the relevant facts having a bearing on the question(s) on which the advance ruling is required, the applicant has stated that they propose to undertake the manufacture and marketing of the goods "Auto Janitor" and "Auto Sanitizer" (hereinafter referred to individually as "the item") under brand names which are the proprietary brand names of the applicant. Both the items consist of a dispenser and filler. The filler is filled with "odoriferous substances", which is installed inside the dispenser. The dispenser is attached with the water pipe which is connected to toilet bowl. The items dispense a continuous dose of the powerful concentrated chemical formulation into water, which is released to the toilet bowl, thus cleaning the ceramic surfaces exposed to flushing. This ensures that the washroom is clean and smells pleasant at all times. The filler is required to be replaced from time to time when the dispensable quantity of the liquid is exhausted.

3. The applicant has supplied the following functional details in their application: The Auto Sanitizer provides an automatic and continuous touch-free hygiene maintenance programme for toilets and urinals, 24-hours a day. It is automatic system for maintaining clean washrooms. The features of this item are: Automatic constant and continuous cleaning of all ceramic surfaces exposed to flushing.

Actively attacks hard water and mineral deposits in drains and septic tanks.

Eliminates odours at source and helps to maintain an odour-free environment.

The Auto Janitor is a '3-in-2' system that provides automatic cleaning and deodorizing with outstanding germ kill for toilets and urinals. The features of this item are: Automatic constant and continuous cleaning of all ceramic surfaces exposed to flushing.

Kills germs, maintains hygiene standards, and meets public demand for higher standards of hygiene.

Reduces maintenance through automatic dispensing and refill indicators.

Powerful organic fragrances continuously neutralize odours in the air and at source.

4. The applicant has also attached with the application the write up/brochure for these two items, which gives the pictures and the highlights of their performance and operational parameters, including examples of their standard installations.

5. As per the applicant, the issue of classification emanates on account of the fact that the item is having both the characteristics of a cleaning preparation and a disinfectant which are classifiable under Chapter 34 & Chapter 38 respectively of the Central Excise Tariff Act, 1985 (hereinafter referred to as the 'Act'). In addition to the above, a small quantity of ethyl alcohol is required as an input in the manufacture of the item. According to the applicant, there is a perception within the State Excise Authorities, who levy and collect excise duty under the Medicinal and Toilet Preparation (Excise Duties) Act, 1955 (In short, MTP Act), that any product for the manufacture of which Alcohol is used is liable to excise duty under the MTP Act.

Citing the relevant portions of Chapter 34 & Chapter 38 of the Act and of the MTP Act, the applicant has submitted that (i) classification under Chapter 38 is ruled out in view of the Chapter Note 7 thereunder which clearly excludes products containing, inter alia, alcohol from the purview of this Chapter.

For the purpose of this Note, 'alcohol' has the meaning assigned to it in Section 2 of the MTP Act.

(ii) Levy is also not sustainable under the provision of the MTP Act in view of its Objects Clause, definition of the term 'toilet preparation' given in the MTP Act and the earlier Ruling of this Authority in the applicant's case itself on the question of classification of Room freshener. For the detailed reasons given therein, it has been held by the Authority that something which is not covered under the medicinal or toilet preparation will not be covered by the provision of MTP Act, even if it contains alcohol (Re: Ruling No. AAR/10(CE)/2005). The items under consideration in the present application are not medicinal or toilet preparation as defined in the MTP Act and hence will not fall within its purview notwithstanding the fact that they contain alcohol.

(iii) The items in question are primarily used for cleaning of toilet and urinal surface. During this process, it cleans the stains, kills the germs and bacteria present in the bowl and also releases continuous fragrance in the air. Though the item contains some disinfectant properties, the main usage is as a cleaning preparation. The brochures released by the applicant also specify that the item is mainly used for cleaning. They would therefore appropriately fall under the category of 'cleaning preparation' and hence classifiable under Tariff Heading 3402 of the Act. That 'cleaning preparation' would fall under this Tariff Heading is supported by the decision of the Hon'ble Tribunal in the case of Metropol India Pvt. Ltd. v. CCE, Delhi which has been upheld by the Hon'ble Supreme Court in its judgment reported in 2003 (157) E.L.T. A135 (S.C).

6. The Commissioner in his written comments referred to the Note 1(b) to the Chapter 34 and Notes 1(a)(2) and 7 to the Chapter 38 of the Act and has contended that the items would appropriately fall under the MTP Act since they contain Ethyl Alcohol. Reliance has been placed in this context on the judgment of the Hon'ble Supreme Court in the case of Dabur India as well as in the case of Baidyanath Ayurved Bhawan (P) Ltd. v. Excise Commissioner, U.P. and Ors. it has been held that mere presence of Alcohol in a medicine is sufficient to make the medicine dutiable under the MTP Act.

7. In the hearing before us, the Ld. Representative of the applicant has made it clear that the applicant is seeking a ruling on the classification of the liquid

(chemical formulation) which is contained in the "filler" of Auto Janitor & Auto Sanitizer [for the sake of convenience, the said liquids would hereinafter be referred to individually as the product]. He reiterated the submissions in support of classification of the two products under Tariff Item 3402 of the Act. As regards the reference made by the Commissioner to the Note 1 (b) to the Chapter 34 of the Act, it was submitted by the applicant that the products in question were not "separate chemically defined compounds" and therefore they could not be excluded from the purview of Chapter 34. Referring to the basic description of the two items as given in the application, it was explained that the difference between them was only in their make up in as much as the concentration of the liquid in the two items was different. He further clarified that where the use of the toilet was more than the Auto Sanitizer would be the right item; otherwise, it was the Auto Janitor which would be normally used. Referring to the technical write up of the two items attached to the application it was pointed out that they were marketed also as a cleaning preparation. Since soap is not the basis of these two products, the appropriate classification would be under Tariff sub-heading 3402 90 42.

The Ld. Jt. CDR speaking on behalf of the Commissioner asserted that the products would appropriately fall under the MTP Act and not under the Central Excise Tariff Act.

The Authority directed the applicant to submit the details of the constituents of the two products so that the exact nature and identity of the chemical formulation of the liquid could be clearly ascertained and understood for deciding their proper classification.

8. The applicant, in compliance with the above direction, submitted the details of the ingredients for three products instead of two as earlier mentioned. These are (i) Auto Janitor Refill (ii) Auto Janitor "Bio" (Refill) and (iii) Auto Sanitizer. In the covering letter they reiterated that the products were used as "cleaning preparation" and that they did not have any soap but had other surfactants which were used for the purpose of cleaning. They have further clarified that even though the Auto Janitor and the Auto Sanitizer have disinfectants, the content of the disinfectant in the entire refill is relatively less compared to the surfactant

components. Though the percentage of an ingredient does not have any bearing in determining the essential character and nature of the product, even on the basis of the percentage composition of various ingredients in the two products, they would merit classification as cleaning preparation under the tariff sub-heading 3402 90 42. It has been further submitted that the term "cleaning preparations" is very broad and extensive and includes within its ambit preparations which have uses other than cleaning also.

Reliance has been placed in this context on the Explanatory Notes of the HSN on Chapter 34. The term "disinfectant" has a restrictive and specific meaning and includes within its scope products of only one specific property i.e. disinfectant property. Therefore, according to the applicant, while "cleaning preparations" can have other properties, the word, "disinfectant" is specific and would not include preparations having other functions also. It has accordingly been submitted that the products would therefore appropriately merit classification as "cleaning preparations" and not as a "disinfectant".

9. Before considering the submission of the applicant that the products would appropriately fall under Tariff Heading 3402 of the Act it would be useful to first examine the Commissioner's contention on the coverage of the products under the MTP Act. We would also examine the alternative classification of the products under Chapter 38 of the Act in response to the second part of the question raised by the applicant.

10. The Commissioner's stand, we observe, is apparently based on a sweeping generalization that as and when there is alcohol content in any product, it must fall under the MTP Act. The decisions of the Hon'ble Supreme Court in case of Dabur India and Baidyanath Ayurved Bhawan have been relied upon by the Commissioner in support of this contention. We have already dealt with this aspect in great detail in our Ruling (Ruling No. AAR/10(CE)/2005 dated 06.10.2005) given in this applicant's case, though for a different product. After carefully examining the provisions of the MTP Act including the scope of the definition of 'Toilet preparation' given therein and the Notes 1(d), 3&4 of Chapter 33 of the Act, we came to the conclusion in that case that the products were not 'Toilet preparation'

as defined in the MTP Act. We had expressed our view in clear terms that the effect of Note 1(d) would be that if a preparation in the nature of perfumery, cosmetics and toilet preparation falls within the meaning of the MTP Act and contains alcohol or opium or Indian hemp and other narcotics, it would get excluded from the purview of Chapter 33. We further went on to explain that it, however, does not follow that a preparation of the description of perfumery, cosmetics and toilet preparation containing alcohol etc. but not covered by the MTP Act would also get excluded from Chapter 33 for the sole reason that it contains alcohol.

We had also gone through the same two decisions of the Hon'ble Supreme Court now being again cited by the Commissioner and found that neither of them supported him. In Baidyanath's case the preparations which were the subject matter of dispute, were undoubtedly medicinal preparations.

It was held that in order to attract duty under the MTP Act, all that was required, was that a medicinal preparation should contain alcohol.

This was cited by the Hon'ble Court in its later decision in Dabur's case where also the product namely Homeodent was found to be a medicinal and toilet preparation.

In our view, the legal position is quite clear and we had explained it in no uncertain terms in our earlier Ruling.

11. On the question of classification of the two products under Chapter 38 of the Act, we have carefully perused the Chapter Notes of Chapter 38 which covers "miscellaneous chemical products". As per-Chapter Note 7, Chapter 38 "does not cover products containing alcohol, opium, Indian hemp or other narcotic drugs". It has been further clarified in this Note that "for the purpose of this Note, "alcohol", "opium", "Indian hemp", narcotic drugs" and "narcotic" have the meanings assigned to them in Section 2 of the Medicinal & Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955)". The term "alcohol" has been defined in the MTP Act as meaning "ethyl alcohol of any strength and purity having the chemical composition C₂H₅OH". The information supplied to us by the applicant indicates that the two products under consideration do contain ethanol/ethyl alcohol.

(Ethanol is a synonym of ethyl alcohol). Therefore, by virtue of the exclusion clause incorporated in Note 7 of Chapter 38 of the Act, they are in any case not classifiable under this Chapter.

12. Before going into further details, we would examine the contention of the Commissioner that the products in question are "separate chemically defined compounds" and hence excluded from the coverage of Chapter 34 by virtue of Chapter Note 1(b). Apparently, the Commissioner's submission is that the products being organic chemicals would fall under Chapter 29 which, inter alia, applies, to "separate chemically defined organic compounds, whether or not containing impurities". As per the Explanatory Note to Chapter 29 of HSN, "a separate chemically defined compound is a substance which consists of one molecular species (e.g., covalent or ionic) whose composition is defined by a constant ratio of elements and can be represented by a definitive structural diagram. In crystal lattice, the molecular species corresponds to the repeating unit cell". It has been further clarified that "separate chemically defined compounds containing other substances deliberately added during or after their manufacture (including purification) are excluded from this Chapter". Having regard to the above explanation, the type of compounds covered in Chapter 29 and the details of the chemical formulations of the two products which are apparently a combination of surfactants, disinfectant, solvents, deodorizing chemicals, dilutant (water) etc. cannot be justifiably treated as falling under the category "separate chemically defined compound". That being so, Chapter Note 1(b) has no application to the products in question. Incidentally, as per the Chapter Note 9 of Chapter 29, products containing alcohol, opium, Indian hemp or other narcotic drugs (as defined in MTP Act) are excluded from this Chapter.

The products under consideration do contain ethyl alcohol as disclosed by the applicant and hence they would in any case be outside the purview of Chapter 29. So, we are unable to agree with this contention of the Commissioner.

13. The moot points for consideration for the purpose of classification are - (ii) If they are 'cleaning preparations', are they having basis of soap or other organic surface-active agents or are they not having a basis of soap or other organic

surface active agents? (iii) If they are not 'cleaning preparations', then, can they be treated as 'disinfectants'? (iv) If they are 'disinfectants', where will they fall for the purpose of Tariff classification since they contain ethyl alcohol? 14. The point (i) arises since the products are evidently having three functions as has been submitted by the applicant itself in the application supported by the pictorial write up attached therewith. The three functions are (a) cleaning (b) killing germs and (c) deodorization. The products in question are therefore clearly composite goods made up of different components.

As per the Rule 2(b) of the General Rules for the Interpretation of the First Schedule to the Central Excise Tariff Act, "Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3." 3. When by application of Rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows: (a) the heading which provides the most specific description shall be preferred to headings providing a more general description.

However, when two or more headings each refer to part only of the materials or substances, contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

The point for consideration therefore gets focused as to which of the three components gives the product its essential character.

Simply stated, this would mean whether the products can be taken to have the essential character of a 'cleaning preparation' or 'disinfectant' or 'deodoriser'. Though the term "cleaning preparation" has been used in Chapter 34 of the Act, it has not been defined therein. The HSN Explanatory Notes also do not define it but mention that "cleaning preparations serve for cleaning floors, windows or other surfaces. They may also contain some odoriferous substances." We would therefore like to examine the aspect of essential constituent/character primarily on the basis of (a) information supplied by the applicant on the ingredients and their respective function including their percentage content in the products and (b) the expression "cleaning preparations" being words of everyday use and not technical expression, its meaning as understood in common parlance or in the commercial world or trade circles.

15. Taking up (a) first, we find that the details have been furnished in respect of three products, namely, (i) Auto Janitor, 600 ml (582 g) Refill (ii) Auto-Janitor "Bio" 600 ml (594 g) Refill and (iii) Auto Sanitizer - Purinel 300 ml (300 g) Refill. For the first product, the following broad break-up of the ingredients usage-wise can be summarized, (1) Fragrance Oil (2) Solvents and Defatters (3) Alcohols for solubilizing the oil (4) Dilutant (water) (5) Disinfectant (6) Surfactant cleaner (7) Chelating agent (8) Acid to balance the pH (9) Chemical to stabilize the pH. From the information provided by the applicant it becomes apparent that this particular product has larger percentage of surfactant cleaner component than the disinfectant component. While the water having the function of dilutant has the lion share, the ethanol/ethyl alcohol and the propan-2-ol whose usage/function is claimed to be to solubilize the oil have the next major share followed by solvent and defatter components. As per the Hawley's Condensed Chemical Dictionary, 14th Edition, ethanol/ethyl alcohol has use as a solvent "for resins, fats, fatty acids, oils, hydrocarbons; it has got also use in the manufacture of other organic chemicals/compounds as well as detergents, cleaning preparations, antiseptics etc". As per Kirk-Othmer's Concise Encyclopedia of Chemical Technology, Fourth Edition, Ethanol or Ethyl alcohol, "is one of the most versatile oxygen - containing

organic chemicals because of its unique combination of properties as a solvent, a germicide, a beverage, an antifreeze, a fuel, a depressant, and especially as a chemical intermediate for other organic chemicals". It has been further stated that "the main uses for ethanol are as an intermediate in the production of other chemicals and as a solvent. As a solvent, ethanol is second only to water". As regards the Propanol-2-ol which is another name for Isopropyl alcohol, it has been indicated in the said Encyclopedia that "it is the lowest member of the class of secondary alcohols and is known as the first petrochemical". It further goes on to say that "uses of isopropyl alcohol are chemical, solvent, and medical.... Because of its balance between alcohol, water, and hydrocarbon like characteristics, isopropyl alcohol is an excellent, low cost solvent.... Isopropyl alcohol is also used as an antiseptic and disinfectant for home, hospital and industry".

From the above, it appears that though ethyl alcohol and Isopropyl alcohol do have germicidal/disinfectant/antiseptic uses, their main usage is inter alia as a solvent for oil, resins, fat etc.

As regards the other two ingredients which are claimed to be 'solvent and defatter', one of them has been indicated by the applicant as a trade mark name. On checking up this trade mark name in Hawley's Condensed Chemical Dictionary, Fourteenth Edition, it is found that its uses are indicated as "Solvents, intermediates for plasticizers, bactericidal agents, and fixatives for soap and perfumes". The other ingredient is also found to have use inter alia as "solvent for fats, oils, waxes, resins". Thus, for these two ingredients as well, the main use as a solvent is apparent, though one of the two is indicated as 'bactericidal agent' also.

This, therefore, brings us to the two components which are described as "surfactant cleaner" and "disinfectant" respectively. The word 'surfactant' is a contraction of "surface active agent". The expression 'organic surface active agent' appears in chapter 34 of the Act. As per Chapter Note 3 thereunder, "for the purpose of heading 3402, "organic surface-active agents" are products which when mixed with water at a concentration of 0.5% at 20C and left to stand for one hour at the same temperature: (a) give a transparent or translucent liquid or stable

emulsion without separation of insoluble matter; and (b) reduce the surface tension of water $4.5 \times 10^{-2} \text{N/m}$ (45 dyne/cm) or less.

It has been further explained in the HSN Explanatory Note to Heading 34.02 that "organic surface-active agents are capable of adsorption at an interface; in this state they display a number of physico-chemical properties, particularly surface activity (e.g., reduction of surface tension, foaming, emulsifying, wetting), which is why they are usually known as "surfactants". In any liquid an attractive force is exerted by the molecules below the surface upon those at the surface-air interface, resulting from the high molecular concentration of a liquid compared to the low molecular concentration of a gas. An inward pull, or internal pressure, is thus created which tends to restrain the liquid from flowing. [Ref:-Hawley's Condensed Chemical Dictionary, 14th Edn.]. This pull or pressure is called surface tension. Liquid like water has higher surface tension compared to say, benzene and hence, the latter flows more readily than water. By reducing the surface tension of cleaning solution a surfactant thus helps it to have easier flowing property. Surfactants also provide emulsification and wetting action. The function of a surfactant is to clean a surface of dirt or what is more broadly known as 'soil'. As per the information collected by us from the Internet in the article titled "The Chemistry of Cleaning - soil removal", (Ref:-www.essind.com/cleaners/gc-chemistry.htm -the website of Essential Industries, Inc.) - "understanding the basic elements of a cleaner's effectiveness against different types of soil is essential to the 'Chemistry of Cleaning.'" For the sake of convenience, we would like to quote certain relevant portions of this article - Soil can be broken down into three broad categories : organic, inorganic and combination.

Organic soils encompass a broad range and include food soils such as fat, grease, protein, and carbohydrate, living matter such as mold, yeast and bacteria and petroleum soils such as motor oil, axle grease and cutting oils....

Inorganic soils include rust, scale, hard water deposits and minerals such as sand, silt and clay....

Combination soils often present the toughest challenge for a cleaner since the soil contains both organic and inorganic components.

Proper identification is critical. Most combination soils are removed with a very concentrated, highly built cleaner that also contains solvent." A surfactant is the most important part of any cleaning agent. The word surfactant is short for "Surface Active Agent". In general they are chemicals that, when dissolved in water or another solvent, orient themselves at the interface (boundary) between the liquid and a solid (the dirt we are removing), and modify the properties of the interface.

How does a surfactant work? All have a common molecular similarity.

One end of the molecule has a long nonpolar chain that is attracted to oil, grease, and dirt (the hydrophobe). Another part of the molecule is attracted to water (the hydrophile).... The hydrophobic end of the molecule gets away from the water and the hydrophilic end stays next to the water. When dirt or grease is present (hydrophobic in nature) the surfactants surround it until it is dislodged from the boundary...." Soil removal is a complex process that is much more involved than just adding soap or surfactant to water. One of the major concerns we have in dealing with cleaning compounds is water hardness. Water is made "hard" by the presence of calcium, magnesium, iron and manganese metal ions. These metal ions interfere with the cleaning ability of detergents. The metal ions act like dirt and "use up" the surfactants, making them unavailable to act on the surface we want to clean.

A chelating agent (pronounced keelating from the Greek word claw) combines itself with these disruptive metal ions in the water. The metal ions are surrounded by the claw-like chelating agent which alters the electronic charge of the metal ion from the positive to negative. This makes it possible for the metal ions to be precipitated with the surfactants. Thus, chelated metal ions remain tied up in solution in a harmless state where they will not use up the surfactants.

Some common chelating agents used in industrial cleaning compounds include phosphates, EDTA (ethylene diamine tetra acetate), sodium citrate, and zeolite compounds....

Detergents,... consist of surfactants and chelating agents...

surfactants remove dirt from a soiled surface and chelating agents are used to surround unwanted metal ions found in cleaning solutions....

Builders are added to a cleaning compound to upgrade and protect the cleaning efficiency of the surfactant(s). Builders have a number of functions including softening, buffering, and emulsifying.

Builders soften water by deactivating hardness minerals (metal ions like calcium and magnesium)....

Builders, in addition to softening, provide a desirable level of alkalinity (increase pH), which aids in cleaning. They also act as buffers to maintain proper alkalinity in wash water.

Finally, builders help emulsify oily and greasy soil by breaking it up into tiny globules. Many builders will actually peptize or suspend loosened dirt and keep it from settling back on the cleaned surface.

Detergents... consist of surfactants, chelating agents and builders... surfactants are designed to remove dirt from a soiled surface. Chelating agents and builders are added to the formula to keep water hardness from interfering with the cleaning process.

Water makes up a large percentage of most liquid cleaner formulas.

It is not uncommon for water-based detergents to contain 50% water or more....

Water can be considered an active ingredient that actually adds to the detergency of cleaners. It performs several very important functions in liquid cleaners. Most importantly, it adds to the "detergency" of a cleaner. Water acts as a solvent that breaks up soil particles after the surfactants reduce the surface tension and allow the water to penetrate soil....

Water also aids in the suspension and anti-redeposition of soils.

Once the soil has been dissolved and emulsified away from the surface, we want to prevent it from being redeposited. Water keeps the soil suspended away from

the clean surface so that it can be carried away easily during the rinsing process....

In addition to water, other chemical solvents are often added to cleaners to boost performance. Compounds such as 2-Butoxyethanol (butyl), isopropyl alcohol (rubbing alcohol) and d-Limonene are all considered solvents. Their main function is to liquefy grease and oils or dissolve solid soil into very small particles so surfactants can more readily perform their function.

A preservative is nothing more than a substance that protects soaps and detergents against the natural effects of aging such as decay, discoloration, oxidation and bacterial degradation....

In detergents, preservatives are used to prevent bacteria from spoiling the solution.

16. We have deliberately gone a little deeper into the chemistry of cleaning to assess the roles of 'surfactants', chelating agents', 'builders', 'solvents' and 'preservatives' - in the 'cleaning' process.

It is clear that surfactants aided by chelating agents, builder and solvent perform the function of cleaning soils from a surface. The ingredients of the 'Auto Janitor Refill' as disclosed by the applicant, include surfactant, chelating agent, solvents and dilutant (including water) whose primary role is to 'clean' the surface. The applicant has declared that the product does not have 'soap' as its basis, which appears to be supported by the details of components for this product, furnished by them. But evidently, the cleaning function is having a basis of organic surface active agent (surfactant).

17. Lets now turn to the 'disinfectant' component, the percentage of which, according to the information supplied to us by the applicant for this particular product, is quite low compared to that of other ingredients whose function is to clean the surface. From the Trade Mark name of the 'Disinfectant' indicated by the applicant, the ingredients are found to be mainly quaternary ammonium compounds. We have also to keep in mind that the ethanol/ethyl alcohol and isopropyl alcohol - the two ingredients of the product in question - are also, per se,

having antiseptic/disinfectant action, though they are apparently to be used by the applicant mainly as solvents for oils, fats, fatty acids etc. We have already seen that these two groups of alcohol do have primary function as a solvent used "to liquefy grease and oils or dissolve solid soil into very small particles so surfactants can more easily perform their function". The short question is - can the product under consideration which is evidently a combination product of a cleaner and disinfectant, be treated as having the primary function of a 'disinfectant' with the cleaning function being subsidiary to it or is the reverse position true? It is necessary to state at this juncture that the Tariff classification of any goods would depend on first establishing its exact and correct identity and then looking for the proper Tariff Heading/Item etc. aided by, wherever called for, the Section/Chapter/Explanatory Notes, the General Rules for Interpretation of the Tariff Schedule, the technical/scientific information and the like. Therefore, the fact that a 'disinfectant' containing ethyl alcohol would go out of Chapter 38 of the Act, cannot and should not preclude us from ascertaining whether the product in question is a 'disinfectant' or not. If it indeed turns out to be so, then one has to consider the issue of classification for such types of disinfectant which contain ethyl alcohol.

18. The word 'disinfectant' is defined in McGraw-Hill Dictionary of Scientific and Technical Terms, Fifth Edition, as 'A chemical agent that destroys microorganisms but not bacterial spores'. Hawley's Condensed Chemical Dictionary, 14th Edition, gives the following note on 'disinfectant' - "A substance used on inanimate objects that destroy harmful microorganisms or inhibit their activity. Disinfectants are either complete or incomplete. Complete disinfectants destroy spores as well as vegetative forms of microorganisms; incomplete disinfectants destroy vegetative forms of the organism, but do not injure spores.

Some representative disinfectants are (1) mercury compounds (mercuric chloride, phenylmercuric borate); (2) halogens and halogen compounds (chlorine, iodine, fluorine, bromine, calcium and sodium hypochlorite); (3) phenols, including cresol from coal tar, o-phenylphenol; (4) synthetic detergents (anionic such as sodium alkylbenzene sulfonates, and cationic, such as quaternary ammonium compounds); (5) alcohols of low molecular weight, except methanol; (6) natural

products (pine oil); (7) gases (sulfur dioxide, formaldehyde, ethylene oxide)". It is clear from the above that 'quaternary ammonium compounds' are 'disinfectants'.

In the case before us, the applicant has submitted that "the product under consideration is meant for cleaning the toilet and urinal surface and provides an odour free clean washroom. The primary character or the primary use of the product is cleaning. While performing the cleaning activity, the product kills the germs and bacteria which is incidental to the primary activity". The applicant has further submitted that "in addition to the above, the brochures released by the Company also specify that the product is mainly used for cleaning". It is therefore to be taken that the applicant is not going to put up the products under consideration for retail sale as disinfectants. A perusal of the brochure on 'Auto Janitor' reveals the words 'CLEANER & DEODORISER' printed on the label of the bottle with brand name 'NEUTRALLE', which is supposed to contain the chemical formulation as refill. It would therefore be reasonable to infer that the applicant's product is not to be marketed or sold as primarily or solely a disinfectant. It can more appropriately be treated as what is commonly known as 'disinfectant-cleaner'. In the article "Cleaning and Disinfecting the Indoor Environment : Chlorine Bleach, Quats and Phenolics" by Roger McFadden, Technical Director, Coastwide Laboratories (Ref - [www.coastwidelabs.com/ Technical% 20 Articles/quatbleach.htm](http://www.coastwidelabs.com/Technical%20Articles/quatbleach.htm)), it has been explained in simple terms that "Disinfectants require the removal of soils from a surface before they are effective. Disinfectant cleaners combine the cleaner and disinfectant into a "one-step" process. A disinfectant-cleaner is diluted and then used to remove soils and kill germs all in one application. One step disinfectant-cleaners save labour time and money. Simply stated, disinfectants 'disinfect' and disinfectant-cleaners 'disinfect and clean". The relevant point to note is the relative role and function of the cleaning process vis-a-vis the disinfecting processes. Cleaning the surface is a prerequisite for disinfectant action to be effective. So, in the one-step disinfectant-cleaner, the cleaning action has an important role to play in removing the visible dirt so the disinfectant can get to work.

19. The thrust put by the applicant on the primary function of cleaning gets support from the brochure for the product Auto Janitor, when it says "The unique 'three in

one' Auto Janitor offers improved automatic cleaning and deodorizing for toilets and urinals with simple programming and flexible dispensing options". This is the perception which they would like any intending customer of the product to have about its use and function. The perception is primarily that of a 'cleaner' which would, in the process of cleaning, perform two other functions as well, - disinfectant and deodorizer. It would be relevant in this context to see how generally such combined products are sold and marketed in the course of normal trade and business by those dealing with them. The information downloaded by us from the Internet in respect of various brands taken at random, shows that products which are meant for 'cleaning' of toilet bowls without having any 'disinfectant' function as well as those which are having components for both 'cleaning' and 'disinfectant' are all commonly advertised and marketed under the same name 'Toilet Bowl Cleaner'. For example, 'Lysol' brand Toilet Bowl Cleaner performs the following functions:- " o Disinfects the toilet bowl as it cleans o Dissolves tough rust stains and mineral deposits on contact o Kills germs such as Salmonella and Escherichia coli o Will not harm plumbing or septic systems." Another product of the same brand, 'Lysol CLING Toilet Bowl Cleaner' does not have any specific 'disinfectant' component. Its functions are:- " o Cleans and deodorizes even under the rim o Thick liquid formula coats the bowl for better cleaning o Leaves a fresh, clean scent o Available in Country Scent, Spring Waterfall and Citrus fragrances o Will not harm plumbing or septic tanks". Both the products are named Toilet Bowl Cleaner'.

This indicates that the emphasis is on 'cleaning' which is normally accepted in the concerned trade as a broad expression covering pure cleaning preparations as well as those preparations which also 'disinfect' the toilet bowls as they 'clean'. The very fact that both the categories are treated as 'cleaners' presupposes that cleaning preparations having 'disinfectant' component as subsidiary to the 'cleaning' component, are generally taken as 'cleaning preparation' only. When a product has primarily or solely the 'disinfectant' function, it is to be labeled and marketed as such, complying with all the relevant regulatory requirements as may be applicable. We may cite the example of the brand 'Phenyle' or 'Dettol' which are labeled and marketed as 'Disinfectant' or 'Antiseptic' respectively. As we have already seen, the applicant's product in question is proposed to be labeled and

marketed as a 'cleaner & deodorizer'. Though the percentage of the active ingredients in such products may not always be a true indicator of its use, function and purpose, it is a matter of record before us that as per the information supplied by the applicant, the percentage of the 'disinfectant' component is definitely less compared to that of the 'surfactant' component - a fact which at least does not contradict the claim of the applicant that the product is primarily a cleaning preparation.

20. Regarding the second product, namely, 'Auto Janitor "Bio" Refill', we find from the details furnished by the applicant, that active ingredients are by and large the same as those of 'Auto Janitor Refill'. There is one component 'Bio F/S' in the "Bio" Refill whose usage/function is indicated as 'Bacterial slurry, which according to the applicant is "a liquid mixture that contains good bacteria which attacks the source of the odour in a urinal by breaking down the uric acid scale deposits in the urinal. The bacteria used in the slurry is in the nature of a weight digesting bacteria". So, effectively, the position is virtually the same as that of 'Auto Janitor Refill' discussed above.

21. In so far as the third product (i.e., Auto Sanitizer) is concerned, the applicant's brochure states that 'Neutrale Auto Sanitizer system provides the most effective automatic hygiene system that maintains clean, sanitized and odour-free toilets and urinals 24 hours a day....

The Auto Sanitizer is an automatic cleaning and hygiene system that keeps toilets and urinals clean and germ-free 24 hours a day".

Generally speaking, an Auto Sanitizer is reported to be "the ideal system for maintaining well cared for washrooms. Automatic constant and continuous cleaning of all ceramic surfaces exposed to flushing and attacks hard water and mineral deposits. It reduces and prevents scale and stains from forming and kills germs. Touch free operation and eliminates the build up of odours". [Ref:-[www.1sthygienesolutions.co.uk/index.php?section_name=WC AND URINAL SANITIZING](http://www.1sthygienesolutions.co.uk/index.php?section_name=WC_AND_URINAL_SANITIZING)], As per the details of the ingredients furnished by the applicant, the 'Purinel Refill' has anionic surfactant and emulsifier as its main active ingredient with ethanol/ethyl alcohol and propan 2-ol as components to solubilize the oil,

water as dilutant, relatively low percentage of the 'Biocide' compared to the surfactant percentage and a very small percentage of 'Chelating Agent'. The particular type of anionic surfactant, whose trademark name has been indicated by the applicant, is the one which is used in all types of liquid wash and cleaning agents, especially suited for highly concentrated products.

So, in effect, this product is also having similar characteristics as those of an Auto Janitor Refill in as much as it is primarily a cleaner with subsidiary disinfectant qualities.

The two plastic bottles each of the Auto Janitor Refill and Auto Sanitizer Refill respectively submitted by the applicant as representative samples of the items in question also confirm the position that they are to be labeled and marketed in retail pack as cleaner and none of them carries a label of 'disinfectant'.

(i) All the three products in question are in the nature of preparations and having disinfectant qualities which are subsidiary to their primary qualities as a cleaner. The deodorising property is evidently secondary to the cleaning property.

(ii) By applying the test of essential character, the three products are to be taken as 'cleaning preparations'.

(iii) They are having as basis the organic surface active agents (surfactants).

(iv) As is apparent from the information furnished by the applicant, the 'filler' which contains the product is to be replaced from time to time when the dispensable quality of liquid is exhausted. It means the products are to be put up for retail sale.

23. We would now turn to Chapter 34 of the Act to see whether the products fall within its purview or not. This Chapter deals with: Soap, Organic Surface-Active Agents, Washing Preparations, Lubricating Preparations, Artificial Waxes, Prepared Waxes, Polishing or Scouring Preparations, Candles and similar Articles, Modelling Pastes, "Dental Waxes" and Dental Preparations with a basis of Plaster.

We observe that the applicant's submission is that the products are "cleaning preparations" and would appropriately be classifiable under the Tariff Item 3402

which covers: Organic surface active agents (other than soap), surface-active preparations, washing preparations (including auxiliary washing preparations) and cleaning preparations, whether or not containing soap, other than those of heading 3401.

It is apparent from the above description that all cleaning preparations other than those of Heading 3401 would be classifiable under the Tariff Item 3402 irrespective of whether or not they contain soap. For the sake of convenience, it is necessary to refer to the description of goods covered by Tariff Item 3401 which reads as: Soap; organic surface-active products and preparations for use as soap, in the form of bars, cakes, moulded pieces or shapes, whether or not containing soap; organic surface active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap; paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent.

The goods covered by the Tariff Item 3402 are other than those falling under Tariff Item 3401 as described above.

At this juncture it is also necessary to refer to the HSN Explanatory Note to Tariff Heading 34.02. It clarifies that it has got broadly two sub-groups namely (I) organic surface-active agents (other than soap) and (II) surface-active preparations, washing preparations (including auxiliary washing preparations) and cleaning preparations, whether or not containing soap, other than those of Heading 34.01. It has been further clarified that the group (II) comprises three categories of preparations, namely (A) surface-active preparations (B) washing preparations (including auxiliary washing preparations) and cleaning preparations, having a basis of soap or other organic surface-active agents and (C) cleaning or de-greasing preparations, not having a basis of soap or other organic surface active agents. For the 'preparations' indicated in (B) above, the Note goes on to explain that "these various preparations generally contain essential constituents and one or more subsidiary constituents. The presence of these latter constituents distinguishes, in particular, these preparations from those described in Part(A) above. The essential constituents are synthetic organic surface-active agents or

soaps or mixtures thereof.

(4) Ancillaries (e.g., chemical or optical bleaches, antiredeposition agents, corrosion inhibitors, antielectrostatic agents, colouring matter, perfumes, bactericides, enzymes).

These preparations act on surfaces by bringing the soil on the surface into a state of solution or dispersion.

24. Having regard to our conclusion that the products in question are cleaning preparation having a basis of organic surface active agent other than soap), they are squarely covered by Tariff Item 3402 of the Act. One more aspect which we would like to mention in support of this view is the example of "Disinfectant soaps". 'Disinfectants' are covered by Tariff Heading 38.08 whereas 'soaps' fall under Tariff Heading 34.01. As per the HSN Explanatory Notes to Tariff Heading 38.08, one of the specified group of items which are excluded from the purview of the Heading 38.08 is - (b) Preparations covered by more specific headings of the Nomenclature, or having subsidiary disinfecting, insecticidal etc., properties, for example: We note from the above that the words "heading 34.01" appear after "Disinfectant soaps", indicating that they are to be classified in heading 34.01. Heading No. 34.01 refers to 'soaps', but it does not refer specifically to 'disinfectant soaps'. In our view, the products before us which are in effect disinfectant cleaner should be treated similarly to the example of the disinfectant soap for classification purposes. Though these products have disinfecting qualities, as does the disinfectant soap, we are of the view that they should be classified under the Tariff Heading 3402 of the Act on the basis of its primary description and use as a cleaner (cleaning preparation).

Having said so, we now proceed to examine the exact sub-heading and tariff item of the Act under which the three products would fall.

Tariff sub-heading 3402 20 covers 'Preparations put up for retail sale' which would appropriately apply to the products in question as they are to be put up for retail sale. Below this sub-heading, we find the Tariff Item 3402 20 10 which is interalia, for 'cleaning preparations, having a basis of soap or other organic surface active

agents". As we have found, the applicant's products are cleaning preparations having a basis of organic surface active agents. They must accordingly fall under this Tariff Item. We have noticed that the applicant has submitted that their products in question would be classifiable under the Tariff Item 3402 90 42. For an easy reference and comparison purpose, we reproduce the relevant portions of the Tariff Heading 3402 as follows: --- Washing preparations (including auxiliary washing preparations) and cleaning preparations, having a basis of soap or other organic surface active agents ---- Cleaning or degreasing preparations not having a basis of soap or other organic surface active agents.

---- Washing preparations (including auxiliary washing preparations) and cleaning preparations, having a basis of soap or other organic surface active agents ---- Cleaning or degreasing preparations not having a basis of soap or other organic surface active agents.

What we notice is that the Tariff sub-heading 3402 90 covers goods which are other than, inter alia, the preparations put up for retail sale. This is supported by the fact that Tariff Heading 3402 20 which is for 'preparations put up for retail sale' has three Tariff Items under it namely 3402 20 10, 3402 20 20 and 3402 20 90 - the last one being 'other' which means, other than those covered by 3402 20 10 and 3402 20 20. So, all the types of goods covered by 3402 20 are exhaustively covered by these three Tariff Items. The next sub-heading 3402 90 (-- other), therefore, stands for those which are other than (i) 'organic surface-active agents, whether or not put up for retail sale' as well as (ii) 'preparations put up for retail sale'. The applicant's products would not fall under this sub-heading as they are preparations to be put up for retail sale. The question of their falling under any Tariff Item under 3402 90 would not, therefore, arise. Classification under the Tariff Item 3402 20 10 is thus the most appropriate one in the facts and circumstances presented before us.

It goes without saying that the points (iii) & (iv) in para 13 above do not require any examination having regard to our findings on points (i) & (ii).

In view of the foregoing, we rule on the question raised by the applicant that each of the three products namely 'Auto Janitor Refill', 'Auto Janitor "Bio" Refill' & 'Auto

Sanitizer Refill', would be classifiable under Tariff Item 3402 20 10 of the First Schedule to the Central Excise Tariff Act, 1985.

Pronounced in the open Court of the Authority on this 7th day of September, 2006.

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