

F.No.102/05/2006-CX-3

Government of India

Ministry of Finance

Department of Revenue

New Delhi, dated 3rd June, 2009

Order under section 37 B of Central Excise Act, 1944.

Subject :- Classification of Coconut Oil packed in small containers.

In exercise of powers conferred under section 37B of the Central Excise Act, 1944 Central Board of Excise & Customs considers it necessary, for the purposes of uniformity with respect to classification of 'coconut oil' packed in small containers and levy of excise duty, to issue the following instructions. Same issue was examined in the year 1995 but subsequently the Central Excise Tariff was amended w.e.f. 28.2.2005 and therefore, the issue has been re-examined.

2. There are two contenting classification. Chapter 15 covers various types of vegetable oil including coconut oil and Chapter 33 covers cosmetics including hair oil.

3. The disputes have arisen in respect of coconut oil when it is sold in small packs say of 50 ml. or 100 ml. When the Coconut oil is sold in small containers, following indications have been found on containers or labels.

- A. 'hair oil'
- B. 'edible oil'
- C. 'pure coconut oil' or 'coconut oil'

When 'hair oil' is printed on the container/label, there is no dispute and it is classified as 'hair oil' under chapter 33. Disputes have arisen in respect of other two categories ('edible oil', 'pure coconut oil or coconut oil'). Department is contending that coconut oil falling under these two categories are meant for sale as 'hair oil', therefore, it shall be classified as 'hair oil' under chapter 33. The manufacturers plead that this issue stands settle by a Circular issued in 1995, and as they are not printing the specific use of such oil as 'hair oil' it should be classified as 'vegetable oil' under chapter 15, irrespective of the fact that consumer may use it as 'hair oil'.

4. Circular No.145/56/1995-CX-3, dt. 31.08.1995, clarified that for classification of coconut oil under chapter 33 (as hair oil), it must satisfy the requirements of chapter Note 2 and 6 of Chapter 33 (of erstwhile 6 digit tariff system). Though an oil may be capable of being used as hair oil, the product must satisfy the criteria of label/literature on packing of coconut oil showing its use as hair oil as per note 2 to Ch.33. The circular says that in the absence of any proof that the coconut oil was specifically prepared for use on the hair (or) any label/literature/indications on the containers to the effect, the subject goods cannot be classified under 3305.90 simply because they were packed in small containers and applied by some sections of the society on the hair and it would be classified under chapter 15 as coconut oil.

The said Chapter Note 2 to Chapter 33 has been modified alongwith addition of a new Section Note 2 to Section VI w.e.f. 28.2.2005. The amendments were carried out while aligning the Central Excise Tariff with internationally accepted Harmonized System of Nomenclature (HSN). In view of these amendments, the clarification issued in 1995 requires modifications for classification of coconut oil packed in small containers.

5. The comparison of old and the new note brings out the following facts :-

(i) The erstwhile Chapter Note 2 prescribed a condition that Heading No.3305(which covers hair oil also) applies to products put up in packing with label, literature or other indications, showing that they are for use as cosmetics or which are put up in a form clearly specialized for such use. A plain reading of the Chapter Note would show that, in order to bring a product in the category of hair oil falling under Heading 3305, the packing of said product or it's label/literature must give an indication that is meant for use as hair oil.

(ii) The above mentioned wordings have been deleted in the new Chapter Note and they have been replaced by the words, namely, **"put up in packing of a kind sold by retail for such use"**. The said amendment clearly shows that if a particular packing of coconut oil is generally sold in retail as hair oil, in that case, the said product would be classified under heading 3305. In other words, the strict conditionality like label, or literature of the product showing its use as hair oil or a specialized packing to show beyond doubt it's use as hair oil has been removed and the general condition as to how the said product is being generally sold in retail has been prescribed in the new Chapter Notes.

(iii) Further, the new Section Note also provides that goods classifiable in Heading 3305 by reason of being put up for retail sales are to be classified in the said heading and in no other heading of the schedule. This Section Note further supports the interpretation that though a product is capable of being classified under more than one heading, even then because of the

nature of its retail packing, which is indicative of its use as hair oil, the classification under heading 3305 would get priority. The illustration given in the HSN also supports this view. HSN Explanatory Notes to Section 2 of Section VI provides that sulphur put up for retail sale for therapeutic purpose is classified under heading 3004 and not in heading 2503 or 2802. Therefore, by the same logic, if coconut oil is packed in retail packs of say 10 ml. pouch or 50 ml bottles, which are generally used by consumers as hair oil, the same would get classified in heading 3305 and not under Chapter 15. But, if the same coconut oil is packed in say 1 liter or 2 liter packages, which are generally used by consumers for edible purposes (even though some customers may use it as hair oil), it would be classified under chapter 15.

Hence, in view of the amendments/insertion of Chapter Note and Section Note, the classification of coconut oil would depend upon the fact as to how the majority of the customers use the said product. Therefore, if coconut oil is packed in packages which are generally meant for sale in retail as hair oil, in that case the said product would be classified as hair oil under heading 3305, even though few consumers may use it as edible oil.

Through field survey, it has been gathered that smaller packs upto the sizes of 200 ml are normally used as hair oil by the customers. It has also been reported that in small pack sizes upto 200 ml are stacked along with other hair oil care preparations/cosmetics and not in edible oil section in the retail shops. Enquiries also reveal that small packs of coconut oil displayed at the hair care shelves are used as hair oil only and the customer ask for the smaller packages or the sachets for using them as 'hair oil'.

6. In view of foregoing discussion, it is concluded that coconut oil packed in containers upto 200 ml may be considered as generally used as hair oil. This would bring uniformity in assessment in respect of coconut oil sold in small containers irrespective of the fact as to whether its use as hair oil is indicated on containers/labels or not. Therefore, following instructions/directions are issued:

- (i) The Circular No.145/56/1995-CX, dated. 31.08.1995, stands withdrawn.
- (ii) The coconut oil packed in small container of sizes upto 200 ml shall be classified under heading 3305.
7. Based on the above clarification pending cases may be disposed of.
8. Receipt of this order may please be acknowledged.
9. Hindi version will follow.

(Ashima Bansal)

Under Secretary to the Government of India