

MAHARASHTRA AUTHORITY FOR ADVANCE RULING

(constituted under section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri B. V. Borhade, Joint Commissioner of State Tax

(2) Shri Pankaj Kumar, Joint Commissioner of Central Tax

GSTIN Number, if any/ User-id	27AAACC3269J1ZK	
Legal Name of Applicant	CARGILL INDIA PRIVATE LIMITED	
Registered Address/ Address provided while obtaining user id	7 th , 701, South Block, Sacred World, Wanawadi, city Pune M CORP, Taluka, Pune City, Maharashtra, 411040.	
Details of application	GST-ARA, Application No. 09 Dated 21.12.2017	
Concerned officer	Dy. Commr. of S. T. (PUN-VAT-E-614),LTU-2, Pune.	
Nature of activity(s) (proposed / present) in respect of which advance ruling sought		
A	Category	Factory/Manufacturing, Whole Business, Retail Business, Service Provision, Service Recipient
B	Description (in brief)	Cargill India Pvt Ltd. is a wholly owned subsidiary of Cargill Inc.,USA. Cargill's operations in India started in 1987. It employs more than 2,000 employees working in offices and plants across the country and have a network of warehouses and depots. Cargill in India, is engaged in the following business – <ul style="list-style-type: none">• Processing, refining and marketing imported and indigenous vegetable oils• Offering high quality food ingredients to serve food manufacturers and food service industry• Originate, process, store, trade and market a wide range of agricultural commodities such as grains, oilseeds, sugar and cotton• Premix, compound feed and therapeutic care products to nourish and treat animals• Risk management and financial solutions• Freight solutions and serve industrial customers with energy commodities and metal products
Issue/s on which advance ruling required	(i) classification of goods and/or services or both (ii) applicability of a notification issued under the provisions of the Act	
Question(s) on which advance ruling is required	As reproduced in para 01 of the Proceedings below.	

PROCEEDINGS

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act"] by CARGILL INDIA PRIVATE LIMITED, the applicant, seeking an advance ruling in respect of the applicability of GST on:

Whether Natural Ester Dielectric Fluid (hereinafter referred to as ' Envirotemp FR3') fall under Serial no. 90 of Schedule I of Notification No. 1/2017-State Tax (Rate) dated 29th June, 2017 issued under the Maharashtra Goods and Services Tax Act, 2017 and Notification No. 1/2017- Central Tax (Rate) dated 28th June, 2017 issued under the Central Goods and Services Tax Act, 2017 is taxable at the rate of 2.5% (State tax and Central tax)

OR

Whether Envirotemp FR3) fall under Serial no. 27 of Schedule II of Notification No. 1/2017-State Tax (Rate) dated 29th June, 2017 issued under the Maharashtra Goods and Services Tax Act, 2017 and Notification No. 1/2017-



Central Tax (Rate) dated 28th June, 2017 issued under the Central Goods and Services Tax Act, 2017 is taxable at the rate of 6% (State tax and Central tax)?

At the outset, we would like to make it clear that the provisions of both the CGST Act and the MGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the MGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, a reference to such a similar provision under the CGST Act / MGST Act would be mentioned as being under the "GST Act".

02. FACTS AND CONTENTION - AS PER THE APPLICANT

The submissions, as reproduced verbatim, could be seen thus-

STATEMENT OF THE RELEVANT FACTS HAVING A BEARING ON THE QUESTION(S) ON WHICH THE ADVANCE RULING IS REQUIRED.

The present Advance Ruling application is being filed by M/s. Cargill India Private Limited ("hereinafter referred to as the "The Applicant"), a company incorporated under the laws of India, having its registered office at Y-65, Ground Floor, Hauz Khas, New Delhi-16. The applicant is registered in the State of Maharashtra under Maharashtra Goods and Service Tax Act, 2017 having GST registration number 7AAACC3269J1ZK with its principal place of business at 7th, 701, South Block, Sacred World, Wanawadi, city Pune MCORP, Taluka, Pune City, Thane, Maharashtra, 411040.

1. **BACKGROUND OF THE APPLICANT**

1.1. The Applicant is a subsidiary of a leading US multinational, Cargill Inc. Cargill provides food, agriculture, financial and industrial products and services to the world. Together with farmers, customers, governments and communities, the company helps people thrive by applying its market leading insights and 150 years of experience. Cargill, globally, has more than 155,000 employees in 70 countries who are committed to feeding the world in a responsible way, reducing environmental impact and improving the communities.

1.2. In India, the Applicant is broadly engaged in the following businesses -

- *Processing, refining and marketing imported and indigenous vegetable oils serving food industry customers with vegetable oils, fats, blends and bakery shortenings and serving household consumers with a portfolio of fortified and healthy branded edible oils*
- *Offering high quality food ingredients to serve food manufacturers and food service industry*
- *Origination, processing, storing, trading and marketing a wide range of agricultural commodities such as grains, oilseeds, sugar and cotton*
- *Offering premix, compound feed and therapeutic care products to nourish and treat animals*

1.3 In India, under food segment of Applicant's business there are three manufacturing units at Kandla, Gujarat, Kurkumbh, Maharashtra and Dvenge, Karnataka. In addition to the manufacturing plants, the Applicant has depots, warehouses and branches across 23 states in India.

2. **ABOUT THE PRODUCT-NATURAL ESTER DIELECTRIC FLUID**

- 2.1 One of the products manufactured by the Applicant is Natural Ester Dielectric Fluid, commonly known as Envirottemp FR3. The said product is manufactured by the Applicant in its Kurkumbh plant in Maharashtra and thereafter sold from there.
- 2.2 Natural ester dielectric fluid is a proficiently emerging product/technology in the field of transformer dielectric application in the global power industry. It is based on renewable resources and produced from vegetable seeds. The product is made up of refined soya beans oil after mixing some additives with the same. However the basic characteristics, nature of product remains the same even after mixing of additives.
- 2.3 In addition to being derived from renewable resources, it has numerous other advantages in terms of dielectric application. The said product has very high fire point which in turn provides high fire safety for transformers. It is best suitable for densely populated areas where a transformer fire can lead to a huge loss of life and property.
- 2.4 Envirottemp FR3 is an FM Global Approved. Besides a much higher fire safety, this fluid improves the life of the insulation paper of the transformer which leads to improved life of the asset. The improved life of the transformer leads to the economic benefits for the end customer by reducing the overall cost.
- 2.5 Envirottemp FR3 has immensely helped utility companies and end consumers globally by increasing cost savings and efficiency without requiring major operational changes or capital investments. In India, the procurement of Natural Ester fluid is done through the tendering process. In most cases, the fluid is procured by the Original Equipment Manufacturers (OEMs) who further supply the fluid to the end user along with the transformer. The end user is generally a utility or an industrial client. In certain cases, these utilities directly procure the fluid as well. Due to this reason, the end customer buying or placing the purchase order to the Applicant varies from different transformer manufacturers present in the market to the different categories of end users.

3. **MANUFACTURING PROCESS**

- 3.1 The starting point in the production of vegetable oil based dielectric fluid is the vegetable seeds from trees. In case of the Applicant, the ester fluid is made from Soybean oil. After separation of solid matter, the oil is treated with special solvents to remove unwanted components. Bleaching is usually done by clay filter presses, which further purify the oil. Deodorization by steam removes volatiles that produce odour.
- 3.2 The final stage is the further purification and processing of Refined Bleached Deodorized oil. During processing additives are added to make the final product suitable for customer. After this, appropriate quality checks are done and final product is



ready for the market.

4. AMBIGUITY IN CLASSIFICATION OF NATURAL ESTER DIELECTRIC FLUID

- 4.1 Under the erstwhile Central Excise regime, the said product was classifiable under Tariff heading 1518 which read as under- *'Animal or vegetable fats and oils and their fractions, boiled, oxidised, dehydrated, sulphurised, blown, polymerized by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516, inedible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this chapter not elsewhere specified or included'*
- 4.2 As per First schedule of Central Excise Tariff Act, 1985, Excise duty was levied at the rate of 6% on all the products falling under Chapter heading 1518. Further, the said tariff heading was exempted by way of Notification no. 12/2012 - Central Excise dated 17th March 2012, implying that the effective Excise duty rate on this product was Nil under Excise law.
- 4.3 It is further submitted that under the erstwhile Maharashtra Value Added Tax Act, 2002 tariff heading 1518 was classified under serial no. 54 of the Schedule C as an industrial input read with MVAT notification no. VAT-1505/CR-234/Taxation-I dated 1st September 2005, (Sl. No. 14). Thus, the effective rate of VAT on the said goods was 6%.
- 4.4 Under the Maharashtra Goods and Service Tax Act, 2017, Chapter heading 1518 is appearing under Schedule I and Schedule II of Notification No.01/2017 - State Tax (Rate) dated 29th June 2017. The relevant extract of both the said Schedules are as under :

A. Schedule I - Taxable at the rate of 2.5% State Tax

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
88	1516	Vegetable fats and oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinised, whether or not refined, but not further prepared.
90	1518	Vegetable fats and oils and their fractions, boiled, oxidised, dehydrated, sulphurised, blown, polymerised by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516

B. Schedule II - Taxable at the rate of 6%. State Tax

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
25	1516	Animal fats and oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinised, whether or not refined, but not further prepared.
27	1518	Animal fats and animal oils and their fractions, boiled, oxidised, dehydrated, sulphurised, blown, polymerised by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516; <u>inedible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this chapter, not elsewhere specified or included</u>

- 4.5. The product in question, i.e., natural ester dielectric fluid is nothing but vegetable oil which is chemically modified to make it fit for transformers and other electricity storage devices. From a reading of the above entries, it appears that the product in question falls under Entry 90 of Schedule I of the MGST Act and taxable at 2.5%.
- 4.6. Further, it also appears that Entry 27 of Schedule II of the said Notification covers animal fats and oil only. However, the Second part of the said entry, i.e., inedible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this chapter, not elsewhere specified or included creates an ambiguity with respect to the classification of the said product, in as much as, the said entry seems to also include inedible mixtures or preparation of vegetable fats or oils.

5. QUESTION FOR DETERMINATION OF THE HON'BLE AUTHORITY

IN VIEW OF THE AMBIGUITY PERSISTING IN ENTRY 90 AND ENTRY 27 OF SCHEDULE I AND SCHEDULE II RESPECTIVELY. THE HON'BLE AUTHORITY IS HUMBLY REQUESTED TO PROVIDE A RULING ON THE BELOW-MENTIONED QUESTIONS

- 5.1 Whether Natural Ester Dielectric Fluid, being a chemically modified vegetable/soybean oil is classifiable under Entry 90 of Schedule I of the Notification No. 01/2017-State Tax (Rate) under the MGST Act and taxable at the rate of 2.5% State Tax?
- 5.2 Whether Natural Ester Dielectric Fluid can be said to be a mixture of inedible vegetable oil which is not elsewhere classified, hence, classifiable under Entry 27 of Schedule II of Notification No. 01/2017 - State Tax (Rate), under the MGST Act, and taxable at the rate of 6%. State Tax?
- 5.3 Pass such other Ruling as it may be deemed fit in the interest of equity and good conscience. It is submitted that the Applicant is of the humble view that the product in question should be classified under Entry 90 of Schedule I of the said Notification and not under Entry 27 of Schedule II. In support of its view, the Applicant, hereby humbly submits its interpretation of the relevant Entries of Schedule I and II.

It is submitted that the Applicant is of the humble view that the product in question should be classified under Entry 90 of Schedule I of the said Notification and not under Entry 27 of Schedule II. In support of its view, the Applicant, hereby humbly submits its interpretation of the relevant Entries of Schedule I and II in Annexure II below.

STATEMENT CONTAINING THE APPLICANT'S INTERPRETATION OF LAW AND /OR FACTS, AS THE CASE MAY BE, IN RESPECT OF THE QUESTION(S) ON WHICH THE ADVANCEE RULING REQUIRED

The Applicant humbly submits that Natural Ester Dielectric Fluid, being a processed vegetable/soybean oil is classifiable under Entry 90 of Schedule I of the Notification No. 01/2017 - State Tax (Rate) under the MGST Act and taxable at the rate of 2.5% State Tax. In support of its contention, the Applicant submits the following grounds amongst others.

1. THE PRODUCT IS A CHEMICALLY MODIFIED VEGETABLE OIL

- 1.1 Natural Ester Dielectric Fluid is an alternative to conventional forms of fluid for power transformers and is derived by treating the oil with special solvents to remove unwanted components through bleaching, deodorization, dehumidification and degasification.
- 1.2 In other words, the product is nothing but a chemically treated/ modified form of soya bean oil which is used as fuel for power transformers. In this regard, it is pertinent to analyze Entry 90 of Schedule II. The said Entry is reproduced below for ease of reference -
"Vegetable fats and oils and their fractions, boiled, oxidised, dehydrated, sulphurised, blown, polymerised by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516"
- 1.3 The above Entry essentially has three aspects namely -
- 1.3.1 The Entry covers only vegetable fats and oils;
- 1.3.2 The vegetable fat and oil should have undergone one of the processes mentioned in the said entry, i.e., boiled, oxidised, dehydrated, sulphurised, blown, polymerised by heat in vacuum or in inert gas
- 1.3.3 The vegetable fat or oil may otherwise be chemically modified
- 1.4 It is submitted that the said Entry no. 90 is wide enough to cover all vegetable oils and fats which are chemically modified. Chemical modification is a process whereby, certain properties of the base oil is changed by adding chemicals to make the



same suitable for certain specific purpose. Owing to the unfavorable impact on the environment of mineral oil-based lubricants, there has been a steady increase in the demand for biodegradable, environment-friendly lubricants. Vegetable oils including soya bean oil is recognized as rapidly biodegradable and are thus promising candidates as base fluids in environment-friendly lubricants.

- 1.5. It is further submitted that the chemically modified base fluids which is soya bean in the present case, exhibit superior oxidation stability in comparison with unmodified vegetable oils. These base fluids in combination with suitable additives exhibit equivalent oxidation stability compared with mineral oil-based formulations.
- 1.6. In view of the above, it is amply clear that the product in question, namely, Natural Ester Dielectric Fluid is nothing but vegetable oil which is chemically modified to be used as lubricant for power sector, clearly falling within the ambit of the Entry 90 of Schedule I of the Notification No. 01/2017 – State Tax (Rate) under the MGST Act.

2. THE PRODUCT IN QUESTION DOES NOT FALL IN ENTRY 27 OF SCHEDULE II

- 2.1. It is submitted that Entry 27 of Schedule II is not the proper classification for Natural Ester Dielectric Fluid. For the ease of reference, Entry 27 has been reproduced below -

"Animal fats and animal oils and their fractions, boiled, oxidised, dehydrated, sulphurised, blown, polymerised by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516, inedible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this chapter, not elsewhere specified or included."

- 2.2. From a reading of the above entry, it appears the following points emerge -
 - 2.2.1. The said Entry has two parts; the first part covers animal fats and animal oils and their fractions and the second part covers inedible mixtures or preparations of animal or vegetable fats and oils
 - 2.2.2. The first part, i.e., animal fats and oils should have undergone one of the processes mentioned in the said entry, i.e., boiled, oxidised, dehydrated, sulphurised, blown, polymerised by heat in vacuum or in inert gas
 - 2.2.3. Animal fat or oil may otherwise be chemically modified
 - 2.2.4. The second part of the entry covers inedible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this chapter, not elsewhere specified or included.

- 2.3. In the instant case, it is clear that soya bean oil is not animal fat or animal oil. Hence, clearly, soya bean oil is not covered in the first part of the Entry. Thus, it needs to be seen whether soya bean oil can be covered in the second part of the Entry, i.e., inedible mixtures or preparations of vegetable fats or oils or of fractions of different fats or oils of this chapter, not elsewhere specified or included.

- 2.4. In this regard, it is imperative to understand the meaning of inedible mixtures or preparation of vegetable fats or oils. The term inedible mixture or preparation of vegetable fats or oils will mean that the mixture or preparation shall be of different vegetable fats or oils. In other words, two or more vegetable fats or oils must be combined together to form an inedible mixture.

- 2.5. In the present case, it is submitted that there is no mixing or preparation of vegetable oil which is taking place. The process in the present case is purely of chemical modification of only soybean oil to convert it into a biodiesel fuel. Given the above, it is humbly submitted that in Natural Ester Dielectric Fluid, there is no mixture of or preparation of multiple vegetable oils or fats or their fractions. Hence, the product in question ought not to be classified in this Entry.

- 2.6. Without prejudice to the above, it is humbly submitted that the said entry covers only animal fats and oils which are chemically modified. When it comes to vegetable fats and oil, the said entry covers only mixtures and preparations of the same. Chemically modified vegetable fats and oil is only covered in Entry no. 90 of Schedule I of the Notification No. 01/2017 - State Tax (Rate) under the MGST Act. Given the above, it is humbly submitted that Entry no. 27 of Schedule II of the Notification No. 01/2017 - State Tax (Rate) under the MGST Act does not cover chemically modified vegetable oil or fats and hence, the product in question should not be classified under the said Entry.

3. SPECIFIC ENTRY SHOULD PREVAIL OVER GENERAL ENTRY

- 3.1. Without prejudice to the above, even assuming that the product in question, i.e., Natural Ester Dielectric Fluid may be termed as a mixture or preparation of vegetable fat and oil, it is submitted that Entry no. 90 of Schedule I which covers chemically modified vegetable oil is much more specific entry as compared to Entry 27 of Schedule II which covers only preparation and mixtures of vegetable fats and oil.

- 3.2. Natural Ester Dielectric Fluid is derived by chemically modifying soybean oil by adding special additives. The process of conversion of the product in question is completely different as compared to mere mixing of two or more vegetable fats or oil.

- 3.3. In this regard, it is pertinent to refer to Explanation 4 of Notification No: 1/2017-Central Tax (Rate) which provides the classification and rate of various products under GST. As per the said Explanation, the rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of the said Notification No. 01/2017.

- 3.4. In terms of Rule 3(a) of Interpretative Rules of the Customs Tariff Act, 1975, when a specific entry is available for classification, goods cannot be classified in a general entry. Taking a cue from the above, it is submitted that Entry no. 90 of Schedule I which covers chemically modified vegetable oil is much more specific entry as compared to Entry 27 of Schedule II which covers only preparation and mixtures of vegetable fats and oil and hence, the product in question ought to be classified in Entry 90 of Schedule I.

- 3.5. In this regard, reliance may be placed on the following judicial pronouncements -

A. In the case of **Sanwar Aggarwal versus The Commissioner of Customs (Port)** reported in 2016 (336) E.L.T. 42 (Cal.) it was held as under-
"Just as a special law in a particular field would prevail over a general law that may be operational in that field, a heading with a more specific description would prevail over a heading with a more general description. In this connection, Rule 3(a) of the General Rules for interpretation of the First Schedule to the Customs Tariff Act makes it very clear that the heading which provides the most specific description shall be preferred to headings providing a more general description. The decision of the Hon'ble Supreme Court in the case of HPL Chemicals Ltd. v. Commissioner of Central Excise, Chandigarh (supra) is squarely on the point. In that case, the Hon'ble Apex Court held that since the goods in question were covered by a specific heading, the same could not be classified under the residuary heading. The Hon'ble Apex Court further held that if the Department intends to classify the goods in question under a heading which is different from the heading under which an assessee classifies such goods, the burden of proof is on the Department which has to be discharged by adducing proper evidence. In the instant case, the onus was on the Department to justify the change of classification sought to be made by the impugned Circular, which onus, in my opinion, has not been discharged by the Department. Thus, it is evident that the impugned Circular is blatantly contrary to the said Rule and is thus, not sustainable."

B. In the case of **Flora Agrotech versus The Commissioner of Central Excise, Vapi** reported in 2015 (319) E.L.T.333 (Tri. - Ahmd.) it was held as under -

"A specific entry in the CETA, 1985 has to be the proper classification than a general entry in Chapter 39 of the CETA, 1985, as per the Rules of



interpretation to the CETA, 1985. The Synthetic de Art Silk Mills Research Association (SASMIRA), Mumbai SASMIRA is linked to the Ministry of Textiles, Govt. of India, SASMIRA and after giving the definitions of Synthetic Textiles, warp knitted fabric etc., opined in their letter, dated 18-4-2012 & 15-3-2013 that the product manufactured by the appellant is "Warp Knitted Fabrics Technical Textile made up of man-made synthetic yarn of width less than 5 mm. As per F. No. 1 (11) 2011 TTC Vol. XX, dated 7-2-2012 written to the appellant by Assistant Director, Govt. of India, Ministry of Textiles, Office of the Textile Commissioner, Mumbai appellant's unit has been registered as a technical textile unit in the records of the office of Textile Commissioner and has been allotted registration No. 05152007. As per the Technical Textile literature issued by office of Textile Commissioner, Ministry of Textile, Govt. of India "Agrotex" includes technical textile products used in Agriculture, horticulture (incl. floriculture), fisheries and forestry. Example of Agrotex technical textile include Shed nets, mulch mats, crop covers, anti-hail nets, bird protection nets, fisheries nets, etc." Further office of Joint DGFT Surat while issuing Authorisation No. 5230009764, dated 15-11-2011 has held their product Warp Knitted Fabrics to be classifiable under ITCHS Code 60059000. As per Indian Standard ICS 59.080.70; 65.020.20 Agro Textiles-Shed Nets, for Agriculture & Horticulture purposes are fabrics made from plastic materials."

- C. In the case of **The Commissioner of Central Excise, Aurangabad versus IVP Ltd.** reported in 2004 (173) E.L.T. 128 (Tri. - LB) it was held as under

"We also find force in the submissions of learned Senior Departmental Representative, that a specific Heading takes precedence over the general one. Heading 69.01 is a specific Heading for nozzles whereas its classification under Heading 85.15 is as general as parts of welding machines. Further, Rule 3 of the Interpretative Rules also provides that "Heading which provides the most specific description shall be preferred to Headings providing a mere general description." Thus, applying Rules of Interpretation and specific mentioning of nozzles in Chapter 69, we hold that ceramics nozzles are classifiable under Heading 69.01. In our view, no specific exclusion, as required to be given in Chapter 85 as nozzles are specifically covered by Chapter 69 of the Tariff. This was also the view expressed by the Tribunal in the case of Emco Lenze Pvt. Ltd. v. C.C. (2003 (156) E.L.T. 905). We, therefore, do not agree with the view of the Tribunal in the case of NTB Hitech Ceramics (supra) and hold that ceramics nozzles are classifiable under Heading 69.01 of the Central Excise Tariff. Reference is answered accordingly."

- 3.6. Basis the above judicial precedents, it is clear that in case a specific entry exists, the goods must be classified in the said entry, even though there is a general/residual entry as well. It is further submitted that the Entry no.27 of Schedule II is a residual or a general entry as the said entry ends with the words - 'not elsewhere specified or included'. It is humbly submitted that by adding these words in the Entry, the intention of the legislature is to render this entry as a residual entry. Thus, if the products can be classified in any other more specific entry, it should be done as such and such specific entry shall be considered over the general entry. In this regard, reference can be drawn from the case of **H.P.L. Chemicals Ltd. versus Commissioner of Central Excise, Chandigarh**, reported in 2006 (197) E.L.T. 324 (S.C.), wherein the hon'ble Supreme Court has held as under -

"The aforesaid reasoning of the Tribunal in our view is incorrect. Heading No. 38.23 (which was subsequently renumbered as Heading No. 38.24) is a residuary heading which applied only to "residual products of chemical and allied industries, not elsewhere specified or included". The Tribunal totally erred in picking up the expression "residue of chemical and allied industries" and on that basis holding as if the said heading is a specific heading. It is on such wrong assumption that the Tribunal further proceeded to hold that Rules for Interpretation of the Tariff are irrelevant. Thus the entire reasoning of the Tribunal is totally misconceived and untenable. Tribunal has missed the words "not elsewhere specified or included". In the present case, we find that "Denatured Salt" is specifically included in Chapter Heading No. 25.01."

- 3.7. Further reliance may be placed on the case of **Gopal Hosiery versus Assistant Collector of Central Excise**, reported in 1989 (41) E.L.T. 35 (Cat.), wherein the Hon'ble High Court of Calcutta held as under -

"The words "elsewhere" must mean "elsewhere specified in the First Schedule". Some goods have been specifically included for the purpose of taxation under Item Nos. 1 to 67. In these categories of goods some goods have been specified as exempt from duty. The goods which have been specified for the purpose of exemption do not cease to stand as specified in the First Schedule only because these have been mentioned for the purpose of exemption. In other words, the residuary Item No. 68 only deals with goods which have not been specified elsewhere in the First Schedule either for the purpose of imposition of duty or granting exemption from duty. That appears to be the clear and natural meaning of the phrase "not elsewhere specified". To say "not elsewhere specified" means only not elsewhere specified for the purpose of imposition of duty is to introduce words of limitation which were not there in the statute. This appears to be the proper construction of Tariff Item No. 68. Even if two constructions are possible of the phrase "not elsewhere specified" the construction which favors the tax-payer must be preferred. Therefore, the expression "all the goods not elsewhere specified" appearing in Tariff Item No. 68 would only mean goods which have not been specified under Tariff Item Nos. 1 to 67 either for the imposition of duty or for the purpose of granting exemption from duty."

- 3.8. It is submitted that in view of the above judicial pronouncements, it is a settled law that classification in residuary entry can be done only if the goods cannot be classified in any entry of the schedule. In the present case, Natural Ester Dielectric Fluid is a chemically modified soybean oil is classifiable under Entry 90 of Schedule I of the said Notification. Hence, it is humbly submitted that the said product cannot be classified in the residuary entry no. 27.

4. COMMON TRADE PARLANCE MEANING SHOULD BE CONSIDERED

- 4.1. Without prejudice to the above, it is humbly submitted that while classifying goods under any entry, how the product is known in common trade parlance should be given due consideration. In the present case, Natural Ester Dielectric Fluid is known as chemically modified biodiesel which is used as transformer fuel in general trade parlance. It is not known as mixture or preparation of vegetable fats or oils.

- 4.2. In this regard, reference may be made to the case of **Atul Glass Industries Ltd. Versus Collector of Central Excise** reported in 1986 (25) E.L.T. 473 (S.C) wherein the Hon'ble Supreme Court has held as under-

"The test commonly applied to such cases is how the product is identified by the class or section of the people dealing with or using the product. That is a test which is attracted whenever a statute does not contain any definition. It is a matter of common experience that the identity of an article is associated with its primary function. It is only logical that it should be so. When a consumer buys an article, he buys it because it performs a specific function for him. There is a mental association in the mind of the consumer between an article and the need it supplies in his life. It is the functional character of the article which identifies it in his mind. In the case of a glass mirror the consumer recalls primarily the reflective function of the article which reflects images. It is referred to as a glass mirror only, because the word glass' is descriptive of the mirror in that glass has been used as a medium for manufacturing the mirror. The basic and fundamental character of an article lies in its being a mirror. Therefore, glass mirror is not treated as glass and glassware ever in trade parlance."

- 4.3. It is humbly submitted that in common trade parlance the product in question is known as an alternative fuel for transformer derived by chemically modifying certain properties of vegetable / Soybean oil. Hence, going by the general trade understanding the said product ought to be classified under Entry 90 of Schedule I as chemically modified vegetable oil.

5. PRINCIPLE OF EQUIVALENCE VIS-A-VIS THE ERSTWHILE INDIRECT TAX REGIME SHOULD BE FOLLOWED

- 5.1. It is submitted that while fixing the rates of goods and services under GST, the GST council largely followed the principle of equivalence vis-a-vis the rate structure under the pre-GST regime.

- 5.2. In this regard, it is pertinent to mention that under Central Excise, the said product was classified under Chapter Heading 1518 under the description, "Animal or vegetable fats and oils and their fractions, boiled, oxidized, dehydrated, sulphurised, blown, polymerized by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516, inedible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this chapter not elsewhere specified or included"

- 5.3. As per First schedule of Central Excise Tariff Act, 1985, Excise duty was levied at the rate of 6% on all the products falling under Chapter heading 1518. Further, the said tariff item was exempted by way of Notification no. 12/2012 - Central Excise dated 17th March 2012, implying that the effective Excise duty rate on this product was Nil under Excise law.

- 5.4. It is further submitted that under the erstwhile Maharashtra Value Added Tax Act, 2002 tariff heading 1518 was classified under serial no. 54 of the Schedule C as an industrial input read with MVAT notification no. VAT-1505/CR-234/Taxation-1 dated 1st September 2005, (SI. No. 14). Thus, the effective rate of VAT on the said goods was 6%.

- 5.5. Given the above, since the effective tax rate on the product under the erstwhile indirect tax regime was 6%, the intention of the GST Council would be to tax the said product under the GST regime at 5% to keep it close to the existing rate, following



the principle of equivalence which has formed the basis of classification of various goods and services into different rate brackets under GST.

5.6. Thus, it is humbly submitted that following the principle of equivalence, the said product ought to be classified in Entry 90 of Schedule I of the Notification No. 01/2017 - State Tax (Rate) under the MGST Act and be subject to 2.5% State tax.

PRAYER

IN VIEW OF THE FACTS OF THE CASE AND SUBMISSIONS MADE IT IS HUMBLY PRAYED THAT THE HON'BLE AUTHORITY MAY KINDLY PASS THE FOLLOWING RULING -

- A. Declare Natural Ester Dielectric Oil to be classified under Entry 90 of Schedule I of Notification No. 1/2017-State Tax (Rate) dated 29th June, 2017 issued under the Maharashtra Goods and Services Tax Act, 2017
- B. Declare the rate of State Tax under the Maharashtra Goods and Service Tax Act, 2017 for Natural Ester Dielectric Oil to be 2.5% ad voleram;
- C. Pass such other Ruling as this Authority may deem fit in the interest of justice, equity and good conscience.

03. CONTENTION - AS PER THE CONCERNED OFFICER

The submission of the Assessing authority as follow -

"In respect of above dealers application for advance ruling, in deciding the correct rate of tax on the product NATURAL ESTER DIELECTRICAL FLUID viz. (Envirotemp FR3)

PRODUCT	TAX RATE	REMARKS
1. Vegetable fats & oils & their fractions Chapter heading 1518 Schedule I(Notification No. 01/2017 dt. 29/06/2017	SGST - 2.5% CGST - 2.5%	1. Used for human consumption 2. Commercial Identity in the common market as a edible products 3. chemicals are not added 4. covered in Schedule I
2. Inedible mixtures or preparations of animal or vegetable fats or oils or fractions of different fats. Chapter heading 1518 Schedule II (Notification No. 01/2017 dt. 29/06/2017	SGST - 6 % CGST - 6 %	1. It is nonedible mixture used as coolant in Transformer 2. It is chemically modified fluid 3. Additives are added into veg oil thereby the basic characteristics of the vegetable oils not remains same. 4. covered in Schedule II 5. Raw material is beg. Oil but in the process it loses its identity and character and final product does not remain veg. oil but a coolant. Hence the claim of the applicant is not acceptable.

The Product - Natural Ester Dielectric fluid commonly known as Envirotemp FR3 is basically inedible mixture of vegetable oil & additive.

This product is covered under schedule II and taxable rate of 6% state tax (SGST) and 6% central tax (CGST) i.e. covered in sr.no. 27 of schedule II on following material fact-

1. Definition of food as given in the Food Safety and Standard Act , 2006 is given below

As per sec 3 clause 'J' of FDA Act 2006

(j) "Food" means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food to the extent defined in clause (zk), genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants, prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances.

Provided that the Central Government may declare, by notification in the Official Gazette, any other article as food for the purposes of this Act having regards to its use, nature, substance or quality;

The product EFR3 is Non edible Product i.e. it is mixture of veg oil & certain additive. Mainly following additives are used in EFR3 Product-as can be seen from another manufacturer's website information.

1. Blend of Natural Esters, Methacrylate resin, Phenol compounds and coloring

As per Provisions of Section 3 clause 'k' of FDA Act 2006 Definition of Food additive is as given below:

(k) "food additive" means any substance not normally consumed as a food by itself or used as a typical ingredient of the food, whether or not it has nutritive value, the intentional addition of which to food for a technological (including organoleptic) purpose in the manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food results, or may be reasonably expected to result (directly or indirectly), in it or its by-products becoming a component of or otherwise affecting the characteristics of such food but does not include "contaminants" or substances added to food for maintaining or improving nutritional qualities;

The list of additives approved by Food Safety & Standard Act 2006 is attached separately. The additives required for production of EFR3 are not seen covered in the Food additives list approved by FDA Act.

As per provision of FDA Act Food license is mandatory for each food product. In the instant case, the applicant has not furnished any document showing the product as has been approved by FDA as food products. If at all impugned product is a food item & the applicant has been approved by the FDA for the same then the subsequent dealer's would also require food product license. In the present case, going by names, as stated by applicant, the customers are Electricity generation/ transmission/ distribution establishments and not dealer in food products.

For classification of goods following theories are commonly resorted to arrive at correct conclusion.

A. Common Parlance Test -

The applicant's product, though claimed as vegetable oil, is commonly known as "Transformer Coolant" in the trade and not a vegetable oil. Further, it can be seen from the leaflet of the product, it is termed as "fire Resistant natural Ester Dielectric coolant." Thus, it is basically Dielectric coolant- a soya oil based transformer fluid and not a vegetable- edible oil.

B. End Use Theory -

Going by this theory also, the product cannot be termed as vegetable oil falling under HSN 1518. The end users of the product are Electricity generation/ transmission/ distribution utilities. The product is never intended to be put to use as vegetable oil.

C. Dictionary Meaning -

Edible oil - Edible oils defined by govt as food substance composition manufactured for human consumption only.

It is categorically being pointed out that, the applicant's product is inedible mixture or preparation of vegetable fats or oil or fractions of different fats.

As per applicant's say and information available for the same product of another manufacturer [Cooper Envirotemp FR3] the product is derived by mixing some additives to soya bean oil. As per the competitor manufacturer's literature 5% mass fraction is related to additives & 95% mass fraction relates to Degummed soya bean oil.



Thus considering all factors, discussed at length in the foregoing paras, it is once again re-iterated that the applicant's product is a inedible mixture of vegetable oil/ fats falling under HSN 1518 and therefore liable for 12% GST [6% CGST + 6% SGST] covered by entry No. 27 of schedule II of Notification No. 01/2017 dtd 29.06.2017."

04. HEARING

The case was taken up for hearing on dt.18.01.2018 when Sh. Rajat Bose, Advocate, attended on behalf of the applicant and made submissions as well as orally argued and explained the difficulty that they were facing in classification of their product in the GST regime. The final hearing was had on dt.07.02.2018 when Sh. Rajat Bose, Advocate appeared and reiterated the contention as made in the written submission and further submitted case laws, copy of relevant HSN part to support their contentions. Sh. Rajat Bose was specifically informed that in this matter, the Authority intends to know as to what are the other chemicals or oils mixed with soyabean oil to make it their final product. He was requested to submit by dt.25.02.2018, a certified test report in this regard from an authorized Laboratory about the exact contents of their product. On hearing dt.28.02.2018, Sh. Rajat Bose, Advocate appeared and submitted manufacturing process flow of their products (self-certified), without revealing the exact contents of the final product. He was reminded about the specific request on dt.07.02.2018 to submit a certified test report from an authorized Laboratory by dt.25.02.2018 for decision in the matter as the Authority intends to know as to what are the other chemicals or oils mixed with soyabean oil to make it their final product. However, the details as asked for were not submitted. He requested to grant him time till dt.08.03.2018 to submit the information as called for. They submitted a copy of an Analysis Report as given by Fare Labs Private Limited, Gurgaon, Haryana on dt.14.03.2018.

The jurisdictional officer, Sh. S.A. Rajput, Dy. Commissioner of State Tax (LTU-E-614) Pune was present on all the three hearings. He has tendered a written submission in the matter.

05. OBSERVATIONS

We have gone through the facts of the case. The product before us is described as "Envirotemp FR3". The packing of the product describes "Envirotemp FR3 Fluid" as Fire Resistant Natural Ester Dielectric Coolant for transformers and related electrical apparatus. The product, as informed, is made up of refined soya beans oil after mixing some additives with the same. The process of manufacture, as informed is thus -

Step 1

Hot water is added to crude soya bean oil for degumming. In water degumming, a sticky viscous oil-water emulsion or gum is removed by using water and a centrifuging process. By way of this process, gums, phospholipids, proteins etc., is separated from the crude oil. These are insoluble in oil when hydrated.

Step 2

After degumming, caustic soda is added to remove the free fatty acid. This process neutralizes fatty free acids in the oil using caustic soda, thereby converting the acids into soaps. These soaps are easily removed by decantation or by centrifugal force.

Step 3

After Neutralization, bleaching earth is added for bleaching. In this process clay adsorbent is mixed intimately with the oil under specified conditions to remove unwanted color bodies and other contaminants. Through this process, Carotenoids are removed,



chlorophyll and its decomposition products are removed, Gossypol-like pigments are removed, Toxic agents, such as polycyclic aromatic hydrocarbons are removed (if carbon is used in quantity).

Step 4

After bleaching, the soya bean oil is deodorized. Deodorizing is essential for removing undesired components such as moisture, color, and odor that negatively impact the taste, smell, and appearance of the final product. Effective deodorization is a complex vacuum steam distillation process that involves using high-pressure steam to heat the oil to a precise temperature for stripping impurities and then cooling it to retain the natural oil characteristics.

Step 5

After the above process, Refined, Bleached and Deodorized (RBD) Soya Bean Oil is obtained.

Step 6

We add some additives to RBD Soya Bean oil and do pre-treatment, after pre-treatment filtration process is undertaken to strain out any impurities that may exist in the oil to make it pure.

Step 7

After addition of additive we do filtration.

Step 8

After filtration, quality check is done to see whether the oil is fit for further processing. If found fit, the oil is put through the next process.

Step 9

We add some further chemicals which is proprietary in nature.

Step 10

We remove moisture and other volatile component.

After the above process, another quality check is done to see whether the oil is fit for sale as transformer fuel.

Step 11

Once the quality check is cleared, the product Envirotemp FR3 is produced which is ready to be sold in the market.

As can be seen, various processes are involved in the manufacture of the impugned product. In step 6, some additives are added. But the applicant has not informed the details of these additives. In step 9, there is addition of some chemicals and again, the applicant has preferred not to divulge the details. To have a correct understanding of the product which would aid in ascertaining the correct classification, the applicant was asked to give a report from a recognized Laboratory. The report as submitted by the applicant states as under -

“FARELABS

FOOD ANALYSIS & RESEARCH LABORATORY

Testing, Calibration, Proficiency Testing & Training Services

Test Report

Sample Particulars:

Nature of sample & No. of samples : Envirotemp FR3 Fluid (One Sample)

Brand Name, if any : None

Batch No. : 214

Sample Quality & Packing : 500ml, Pet Bottle

Date of Performance of test : 10th – 13th March, 2018

Method of Sampling : Sample is provided by Cargill India Pvt. Ltd.

Analysis Report

S. No.	Parameter	Test Result	Protocol
1	Vegetable Oil, % by wt.	98.5	AOCS Ea 8 -58
2	Number of Vegetable Oils present	1	FL/SOP/HPLC -09
3	Other Chemicals, %	1.0	FL/SOP/FC - 280

Inference : The sample is one single Vegetable oil only, there is no blending with any other oil is detected.”

As can be seen, the test report also gives no details of the additives and chemicals which are added while manufacturing the impugned product.

Let us see how the inference and the incomplete particulars could help classifying the impugned product.

The website of the applicant describes the product as -

Envirotemp FR3 fluid is a natural ester derived from renewable vegetable oils – providing improved fire safety, transformer life loadability, and environmental benefits that are superior to mineral oil and unsurpassed by any other dielectric coolant.

The applicant themselves advertise the impugned product thus -



FR3 fluid is a soybean-oil based product for use as a coolant and insulator in high-voltage electric transformers. For the past 30 years, mineral oil has been the dominant dielectric fluid used in transformers. However, mineral oil is flammable and can be toxic to the environment.

FR3 fluid is much less flammable than mineral oil; it biodegrades easily and is carbon neutral, nontoxic and non-hazardous in soil and water*—and it offers superior performance to mineral oil. FR3 fluid can handle a much higher rise in temperature than mineral oil, which means manufacturers can design FR3 fluid-filled transformers 15-20 percent smaller and can deliver up to 20 percent overload capacity. What's more, FR3 fluid actually protects the transformer insulation paper, making it last longer—in fact, five to eight times longer than transformers filled with mineral oil.

<https://www.cargill.com/doc/1432076502628/s10-storage-and-handling-tds.pdf>

Envirotemp™ FR3™ fluid is a natural ester-based dielectric coolant formulated for use in distribution and power transformers. Envirotemp FR3 fluid is primarily used in new transformer applications. It has also been applied in transformer retrofill, new switchgear, specialty power supplies, and other applications.

ENVIRONMENTAL Envirotemp FR3 fluid is formulated from vegetable oils and performance enhancing additives.

Some other information can also be had a look at –

<http://www.netaworld.org/sites/default/files/public/neta-journals/NWfa04-Chem%20Per.pdf>-“Natural Ester Dielectric Fluids” by Lance R. Lewand Doble Engineering Company

The newest versions of natural ester dielectric fluids have been in use in the electrical apparatus industry since approximately 1998 and are becoming more popular. Unlike transformer mineral oil, which is refined from petroleum derived from compressed plant and animal tissue (mostly microorganisms from 70 to 440 million years ago), these liquids are produced from renewable resources such as vegetable oils and seeds.

The main purpose for development of many of these dielectric liquids was to create an environmentally friendly product that was not only stable when used as an insulating liquid in electrical apparatus but also readily biodegraded when exposed to the environment.

Examples of current, commercially-known, natural ester dielectrics are shown in Table 1.

Table 1 - Natural Ester Dielectric Liquids

NAME	TYPE	MANUFACTURER
BIOTEMP®	Comprised mostly of mono-unsaturated high oleic acid triglyceride vegetable oils. The oleic acid group is defined as having one carbon double bond, part of the eighteen carbon atoms in the hydrocarbon chain of a carboxylic acid. Examples of high oleic oils are sunflower, safflower, and rapeseed (canola).	ABB Inc.
BIOTRANS®	A mixture of partially hydrogenated soybean oil high in oleic acid content, methyl esters produced from soybeans, palm or coconut oils used to thin the dielectric liquid	Cargill
Envirotemp® FR3	Edible-seed oil based dielectric liquid. It is a natural ester (triglyceride - fatty acid ester) containing a mixture of saturated and unsaturated fatty acids with 14 to 22 carbon length chains containing one to three double bonds. Suitable vegetable oils, which may be used independently or combined, include: soya, sunflower, and rapeseed (canola).	Cooper Power Systems
Coconut Oil	Coconut Oil	University of Moratuwa, Sri Lanka

What is a Natural Ester?

Esters can be natural, such as those derived from vegetable oils as discussed in this article, or they can be made synthetically from a group of chemicals chosen to yield certain properties. “Ester” is a term applied to chemical compounds with a certain structure.

Refining of a Natural Ester Dielectric Liquid?

Natural esters are refined in a totally different manner than transformer mineral oils. The first major difference is the source of the material for refining. In the case of transformer mineral oils, crude oil is extracted from the ground by drilling and goes through a series of air and vacuum distillation steps, followed by treatment with hydrogen, pressure, and catalyst. In the case of natural esters, the source materials are crops that are grown and then harvested. In this respect, the seed oils are more attractive than mineral oils as they are a renewable resource.

Natural ester dielectrics are manufactured in multistep processes involving several techniques. Two techniques are used for obtaining the crude oil from oil seeds. Batch pressing is the first technique and has been used for some time. Batch processing consists of applying either hydraulic pressure to the vegetable seed or pulp via hydraulic press or through the use of a rotating screw or worm and is best suited for softer crops like sunflower and rapeseed. Another refining process involves crushing the seeds and extracting the oil with a solvent such a hexane and is better suited for harder crops such as soybeans.

A degumming step is necessary to remove materials other than oil, such as chlorophyll. This is performed either by physical separation, which takes time, or by combining the material with water and caustic material to accelerate the separation process. The next step, a bleaching process that is part of a neutralization process, also subjects the oil to clay treatment to remove polar compounds. Deodorizing the oil is accomplished via steam distillation under vacuum up to 200 degrees Centigrade to remove unwanted volatile compounds. The last step, winterizing, which may be optional and depends on the starting material and the degree of refining, involves chilling the oil to remove excessive saturates. Because these refining techniques can be carefully controlled, a more consistent product is produced. In addition, the new natural ester dielectrics differ from their predecessors not only in the refining process but also in the additives used. Whereas the early natural esters had no additives, the new ones have a variety of additives enhancing performance.

Additives

The natural ester dielectric liquids contain additive packages consisting of chemicals to reduce the pour point, aid in oxygen stability, and in some cases have an antimicrobial agent or copper deactivators. This is in contrast to mineral oil, which has either no additives or simply oxidation inhibitors. Mineral oil produced to Doble TOPS or ASTM D 3487 specifications are only



allowed to contain DBPC (2,6-ditertiarybutyl paracresol, BHT) or DBP (2,6-ditertiary-butyl phenol) in concentrations up to 0.3 percent. DBPC and DBP have had a lengthy history of use in transformer oil and no adverse effects have been documented. The U.S. patents for BIOTEMP®, BIOTRANS® and Envirotemp® FR3™ incorporate enough variation into the descriptions of each liquid that the exact combination and concentration cannot be determined. Most of these additives have been well-established in the chemical and food industries for some time, but it is not fully known if there are any adverse characteristics when used in transformers over a long period. The table below provides a listing of the additives and their described use. It must be emphasized that not all of these additives are used but the possibility for some or combination thereof to be used does exist. In some of the dielectric liquids listed in the table, the additive package can make up as much as three percent of the liquid.

Possible Additives in BIOTEMP®, BIOTRANS® and Envirotemp® FR3™

Liquid	Additive and Function
BIOTEMP	Oxidation Inhibitors: Phenolic antioxidants such as: BHA (butylated hydroxy anisole), TBHQ (mono-tertiary butyl hydroquinone), DBPC (BHT, 2,6-ditertiary-butyl paracresol/ butylated hydrotoluene), and alkylated diphenylamines Copper Deactivator: Benzotriazole derivative Pour Point Depressant: PMA (polymethacrylate)
BIOTRANS	Oxidation Inhibitors: citric acid (mostly used as sequester of metals to avoid catalytic effect of those metals), TBHQ (monotertiary butyl hydroquinone) Pour Point Depressant: diethylhexyl adipate, polyalkyl methacrylate
Envirotemp FR3	Oxidation Inhibitors: Phenolic antioxidants such as: BHA (butylated hydroxy anisole), TBHQ (mono-tertiary butyl hydroquinone), DBPC (BHT, 2,6-ditertiary-butyl paracresol/ butylated hydrotoluene), THBP (tetra hydro butro phenone) Pour Point Depressant: (polyvinyl acetate oligomers and polymers and/or acrylic oligomers and polymers) Antimicrobial agent: (BHA, potassium sorbate, sorbic acid, monoglycerides and/or Vitamin E)

Conclusions

Natural esters have been used as a dielectric liquid since the invention of the oil-filled transformer. Because of their chemistry these liquids have some limitations in their use. Recent advances in research and refining and additive packages have produced a new breed of natural esters that try to address these limitations.

<http://www.gegridsolutions.com/alstomenergy/grid/Global/CleanGrid/Resources/Documents/Ester%20Oils%20-%20Think%20Grid%20n%C2%B0%20.pdf>

While there are data and international standards galore for mineral oils, there are as yet no IEC standards addressing the composition or testing of the natural ester oils with their different chemical composition. This lack of standards could be seen as one of the limiting factors with regard to the initial rate of implementation of vegetable oils in PT (power transformers).

With the above information, we see that certain ingredients in the form of additives and chemicals are added to vegetable oils to make them function as a substitute for mineral oil in transformers and other apparatus. The impugned product with the processes undergone to produce the end product of coolant for transformer does not remain vegetable oil *per se*. with this understanding, we come to the classification under the Customs Tariff.

The applicant's invoice for the period prior to GST shows the product being cleared under the Tariff Heading 15180039. Under GST, the applicant seeks a confirmation as to whether the impugned product is covered under the Heading 1518 as found in Schedule I or Schedule II of the Notification No. 1/2017- Central / State Tax (Rate). The rate of tax for the purpose of both the entries differs. For quick reference, we shall reproduce these entries thus -

S. No.	Chapter / Heading/ Sub-heading / Tariff item	Description of Goods	Rate [CGST + MGST]
90	1518	Vegetable fats and oils and their fractions, boiled, oxidised, dehydrated, sulphurised, blown, polymerised by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516	5% [2.5 + 2.5]
27	1518	Animal fats and animal oils and their fractions, boiled, oxidised, dehydrated, sulphurised, blown, polymerised by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516; <u>inedible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this chapter, not elsewhere specified or included</u>	12% [6 + 6]

We shall also reproduce herein the position as appearing in the Customs Tariff Heading 1518 -

1518	ANIMAL OR VEGETABLE FATS AND OILS AND THEIR FRACTIONS, BOILED, OXIDISED, DEHYDRATED, SULPHURISED, BLOWN, POLYMERISED BY HEAT IN VACUUM OR IN INERT GAS OR OTHERWISE CHEMICALLY MODIFIED, EXCLUDING THOSE OF HEADING 1516 ; INEDIBLE MIXTURES OR PREPARATIONS OF ANIMAL OR VEGETABLE FATS OR OILS OR OF FRACTIONS OF DIFFERENT FATS OR OILS OF THIS CHAPTER, NOT ELSEWHERE SPECIFIED OR INCLUDED
------	---



1518 00	-	Animal or vegetable fats and oils and their fractions, boiled, oxidized, dehydrated, sulphurised, blown, polymerized by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516; inedible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this Chapter, not elsewhere specified or included :
	---	<i>Lin seed oil :</i>
1518 00 11	----	Edible grade
1518 00 19	----	Other
	---	<i>Castor oil, dehydrated :</i>
1518 00 21	----	Edible grade
1518 00 29	----	Other
	---	<i>Other Vegetable oil and its fats:</i>
1518 00 31	----	Edible grade
1518 00 39	----	Other
1518 00 40	---	Other

From the Tariff Heading 1518 as reproduced above and from the Harmonized Commodity Description and Coding System Explanatory Notes (HSN), we see that -

- a. There are 2 parts to Tariff Heading 1518 thus -
 - *Part 1 - Animal or vegetable fats and oils and their fractions, boiled, oxidized, dehydrated, sulphurised, blown, polymerized by heat in vacuum or in inert gas or otherwise chemically modified, excluding those of heading 1516;*
 - *Part 2 - Inedible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this Chapter, not elsewhere specified or included :*
- b. Of the Tariff Heading 1518, schedule entry 90 covers portion relating to vegetable fats and oils and their fractions AND schedule entry 27 covers portion relating to animal fats and oils and their fractions.
- c. The schedule entry 27, additionally, covers the portion of the Tariff Heading 1518 pertaining to inedible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of Chapter of 15.
- d. The HSN Notes in respect of the part 1 (as reproduced above) of Heading 1518 say thus-
"This part covers animal or vegetable fats and oils and their fractions which have been subjected to processes which modify their chemical structure thereby improving their viscosity, drying power (i.e., the property of absorbing oxygen when exposed to the air and forming elastic films) or modifying their other properties, provided they retain their original fundamental structure and are not more specifically covered elsewhere, e.g.:
 Thus, the Notes make it clear that the animal or vegetable fats and oils and their fractions should retain their original fundamental structure.
- e. In the present case, we have seen that soyabean oil has to be modified or adapted for use in the transformers. There are chemicals and additives which are added to it. The processes or chemicals or additives are added so as to formulate a certain product which could be used in electrical apparatus. So the processes are intended to manufacture a new commodity in which soyabean oil would be the prime ingredient. And this is precisely why the product is described as one based on soyabean oil or one which is derived or formulated from vegetable oils. The final product obtained after subjecting soyabean oil to different processes is used as a coolant for transformers. The end product has a distinct identity in the sense that when one desires to have vegetable oil, the impugned product would not be accepted. The short point that we would like to make is that the impugned



product is not soyabean oil *per se*. The part 1 (as reproduced above) of Heading 1518 speaks of certain processes which have been subjected to vegetable and animal oils. But the HSN Notes say that despite undergoing these processes, the vegetable or animal oils should retain their original fundamental structure. In the present case, we have a final product which is a transformer coolant. Though the Test Report shows the percentage of the chemicals to be 1% or the vegetable oils to be at 98.5% would not mean that a new commodity has not been produced. We have seen above an extract from an article that *while there are data and international standards galore for mineral oils, there are as yet no IEC standards addressing the composition or testing of the natural ester oils with their different chemical composition*. Each manufacturer has his own set of ingredients to obtain a coolant for transformer. That is precisely the reason that the applicant has not preferred to divulge the details. Thus, by addition of the needful additives and chemicals, we have different transformer coolants made from vegetable oils, each with their different chemical composition. The requirement of retaining the original fundamental structure would not be possible by the use of the additives and chemicals. The vegetable oils are used as the base to manufacture the final product which is a distinct product. The applicant is also selling the product as a Fire Resistant Natural Ester Dielectric Coolant for transformers and related electrical apparatus. The packing of the applicant's product mentions the product as "Envirotemp FR3 Fluid". Thus, it is described as a "fluid". *Is a fluid same as an oil?* A fluid is different from even a liquid, let alone oil. The product is not being sold as a modified vegetable oil but as the product which is resulting from the adaptation of the vegetable oils to obtain a coolant for a transformer. In view thereof, we are convinced that the impugned product would not be covered by the part 1 (as reproduced above) of Heading 1518.

- f. We now come to part 2 (as reproduced above) of Heading 1518. This part covers inedible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of the Chapter 15. The present product, as discussed above, is a preparation from vegetable oil. It is derived from soyabean oil. In addition, it is inedible. Therefore, it could very well be covered by the description "inedible preparations of vegetable oils'.

Now the aspect which remains to be seen is "*not elsewhere specified or included*". We have not found any specific description which covers a "Fire Resistant Natural Ester Dielectric Coolant for transformers and related electrical apparatus". We are not in doubts that entry 90 of Schedule I of the Notification No. 1/2017- Central / State Tax (Rate) would not cover the impugned product. It is felt that the description "inedible preparations of vegetable oils' perfectly fits the impugned product and hence, the entry



27 of Schedule II of the Notification No. 1/2017- Central / State Tax (Rate) which covers the aforesaid description would be applicable.

- g. We have gone through the case laws and arguments relied upon by the applicant. However, we do not find them relevant to the facts that we are faced with.

06. In view of the deliberations as held hereinabove, we pass an order as follows :

ORDER

(under section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA-08/2017/B- 12 Mumbai, dt. 20/3/2018

For reasons as discussed in the body of the order, the questions are answered thus –

Q. Whether Natural Ester Dielectric Fluid (hereinafter referred to as 'Envirotemp FR3') fall under Serial no. 90 of Schedule I of Notification No. 1/2017-State Tax (Rate) dated 29th June, 2017 issued under the MGST Act, 2017 and Notification No. 1/2017- Central Tax (Rate) dated 28th June, 2017 issued under the CGST Act, 2017 is taxable at the rate of 2.5% (State tax and Central tax)?

A. Answered in the negative.

Q. Whether Envirotemp FR3 falls under Serial no. 27 of Schedule II of Notification No. 1/2017-State Tax (Rate) dated 29th June, 2017 issued under the MGST Act, 2017 and Notification No. 1/2017-Central Tax (Rate) dated 28th June, 2017 issued under the CGST Act, 2017 is taxable at the rate of 6% (State tax and Central tax)?

A. Answered in the affirmative.



[Signature]
B. V. BORHADE
(MEMBER)

[Signature]
PANKAJ KUMAR
(MEMBER)

Copy to:-

1. The applicant
2. The concerned Central / State officer
3. The Commissioner of State Tax, Maharashtra State, Mumbai
4. The Jurisdictional Commissioner of Central Tax

CERTIFIED TRUE COPY

[Signature]
ADVANCE RULING AUTHORITY
MAHARASHTRA STATE, MUMBAI
13